



1 I, Zachary G.F. Abrahamson, declare as follows:

2 1. I am a lawyer with the law firm Durie Tangri LLP, counsel of record for Defendant  
3 Facebook, Inc. ("Facebook") in the above-captioned matter. I provide this declaration in support of  
4 Facebook's Opposition to Birnbaum & Godkin, LLP's March 18, 2019 Motion to Seal. I declare that the  
5 following statements are true to the best of my knowledge, information, and belief, formed after a  
6 reasonable inquiry under the circumstances. If called upon to testify, I could and would competently  
7 testify thereto.

8 2. Attached as **Exhibit 1** hereto is a true and correct copy of the Declaration of David S.  
9 Godkin in Response to CMO No. 19, Redacted for Public Filing, filed in this matter on March 18, 2019.

10 3. Attached as **Exhibit 2** hereto is a true and correct copy of the Order re: Defendant  
11 Facebook Inc.'s Motion to Open Discovery and to Compel, issued in this matter on March 15, 2019.

12 4. Attached as **Exhibit 3** hereto is a true and correct copy of the Declaration of Thomas  
13 Scaramellino in Compliance with Amended Case Management Order No. 19, filed in this matter on  
14 March 14, 2019.

15 5. Attached as **Exhibit 4** hereto is a true and correct copy of the Declaration of David S.  
16 Godkin in Support of Response to David S. Godkin, James E. Kruzer and Birnbaum & Godkin, LLP to  
17 Defendant's Ex Parte Application for an Order Enforcing the Stipulated Protective Order, filed in this  
18 matter on February 28, 2019.

19 6. Attached as **Exhibit 5** hereto is a true and correct copy of Case Management Order No.  
20 19, issued in this matter on March 1, 2019.

21 7. Attached hereto as **Exhibit 6** is a true and correct copy of the Declaration of [Redacted],  
22 Redacted for Public Filing, signed on March 20, 2019 and filed on March 25, 2019 in this matter.

23 8. Attached as **Exhibit 7** hereto is a true and correct copy of excerpts from the Reporter's  
24 Transcript of Proceedings in this matter dated March 13, 2019.

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1 I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of  
2 July, 2019, in San Francisco, California.

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ZACHARY G. F. ABRAHAMSON



**PROOF OF SERVICE**

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On July 8, 2019, I served the following documents in the manner described below:

**DECLARATION OF ZACHARY G.F. ABRAHAMSON IN SUPPORT OF  
DEFENDANT FACEBOOK, INC.'S OPPOSITION TO BIRNBAUM & GODKIN,  
LLP'S MARCH 18, 2019 MOTION TO SEAL**

- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

VIA OVERNIGHT MAIL & EMAIL

Reno F.R. Fernandez III  
Matthew J. Olson  
Macdonald Fernandez LLP  
221 Sansome Street, Third Floor  
San Francisco, CA 94104  
[Reno@MacFern.com](mailto:Reno@MacFern.com)  
[Matt@MacFern.com](mailto:Matt@MacFern.com)

*Attorneys for Plaintiff Six4Three, LLC*

**VIA EMAIL ONLY**

Stuart G. Gross  
GROSS & KLEIN LLP  
The Embarcadero, Pier 9, Suite 100  
San Francisco, CA 94111  
[sgross@grosskleinlaw.com](mailto:sgross@grosskleinlaw.com)

**VIA EMAIL ONLY**

David S. Godkin  
James Kruzer  
**BIRNBAUM & GODKIN, LLP**  
280 Summer Street  
Boston, MA 02210  
[godkin@birnbaumgodkin.com](mailto:godkin@birnbaumgodkin.com)  
[kruzer@birnbaumgodkin.com](mailto:kruzer@birnbaumgodkin.com)

**VIA EMAIL ONLY**

Jack Russo  
Christopher Sargent  
ComputerLaw Group, LLP  
401 Florence Street  
Palo Alto, CA 94301  
[jrusso@computerlaw.com](mailto:jrusso@computerlaw.com)  
[csargent@computerlaw.com](mailto:csargent@computerlaw.com)  
[ecf@computerlaw.com](mailto:ecf@computerlaw.com)

*Attorney for Theodore Kramer and Thomas Scaramellino (individual capacities)*

**VIA EMAIL ONLY**

James A. Murphy  
James A. Lassart  
Thomas P Mazzucco  
Joseph Leveroni  
Murphy Pearson Bradley & Feeney  
88 Kearny St, 10th Floor  
San Francisco, CA 94108  
[JMurphy@MPBF.com](mailto:JMurphy@MPBF.com)  
[jlassart@mpbf.com](mailto:jlassart@mpbf.com)  
[TMazzucco@MPBF.com](mailto:TMazzucco@MPBF.com)  
[JLeveroni@MPBF.com](mailto:JLeveroni@MPBF.com)

*Attorney for Birnbaum & Godkin, LLP*

1           **VIA EMAIL ONLY**

2           Donald P. Sullivan  
3           Wilson Elser  
4           525 Market Street, 17th Floor  
5           San Francisco, CA 94105  
6           donald.sullivan@wilsonelser.com  
7           Joyce.Vialpando@wilsonelser.com  
8           Dea.Palumbo@wilsonelser.com

9  
10          *Attorney for Gross & Klein LLP*

11  
12          I declare under penalty of perjury under the laws of the United States of America that the  
13          foregoing is true and correct. Executed on July 8, 2019, at San Francisco, California.

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Christina Ortega

# **EXHIBIT 1**

ON 3/18/2019

By /s/ Marcela Enriquez  
Deputy Clerk

1 James A. Murphy - 062223  
2 JMURPHY@mpbf.com  
3 James A. Lassart - 40913  
4 JLassart@mpbf.com  
5 Joseph S. Leveroni - 304721  
6 JLEveroni@mpbf.com  
7 MURPIIY, PEARSON, BRADLEY & FEENEY  
8 88 Kearny Street, 10<sup>th</sup> Floor  
9 San Francisco, CA 94108-5530  
10 Telephone: (415) 788-1900  
11 Facsimile: (415) 393-8087

12 Attorneys for Plaintiff's Counsel  
13 David S. Godkin (admitted *pro hac vice*)  
14 James E. Kruzer (admitted *pro hac vice*)  
15 Birnbaum & Godkin, LLP  
16 280 Summer Street  
17 Boston, MA 02210  
18 Telephone: (617) 307-6100  
19 Facsimile: (617) 307-6101  
20 godkin@birnbaumgodkin.com  
21 kruzer@birnbaumgodkin.com

14 SUPERIOR COURT OF CALIFORNIA  
15

16 COUNTY OF SAN MATEO

17 SIX4THREE, LLC, a Delaware limited  
18 liability company;

19 Plaintiff,

20 v.

21 FACEBOOK, INC., a Delaware  
22 corporation;  
23 MARK ZUCKERBERG, an individual;  
24 CHRISTOPHER COX, an individual;  
25 JAVIER OLIVAN, an individual;  
26 SAMUEL LESSIN, an individual;  
27 MICHAEL VERNAL, an individual;  
28 ILYA SUKHAR, an individual; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 533328

Assigned For All Purposes To  
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN  
RESPONSE TO CMO NO. 19  
REDACTED FOR PUBLIC FILING**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, David S. Godkin, declare:

2       1. I am a partner at the law firm of Birnbaum & Godkin, LLP, counsel of record for  
3 Plaintiff Six4Three, I.J.C. ("643") in this case. I make this Declaration from personal  
4 knowledge, and if called to testify, I could and would competently testify thereto.

5       2. Case Management Order no. 19, ¶4 directs that I serve a declaration "clarifying  
6 his or any person's, whether employed, consulted, retained, volunteered, affiliated or associated  
7 with Birnbaum & Godkin, LLP, compliance with Paragraph 6 [of the Protective Order] by 'not  
8 reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to  
9 receive such information.'" This declaration is being served pursuant to that Order.

10      3. My firm has stored and maintained Facebook's confidential information on a  
11 password-protected document hosting platform (**Redacted**) and on the firm's secure server.

12      4. Only firm employees have access to the firm's secure server.

13      5. Thomas Scaramellino assisted with the litigation as an outside member of the  
14 legal team. He was not given access to the firm's secure server. Mr. Scaramellino reviewed the  
15 Stipulated Protective Order and blank certification. He then executed the Protective Order  
16 certification on December 1, 2016. A copy of Mr. Scaramellino's executed certification is  
17 attached hereto as Exhibit A. Because Mr. Scaramellino was not employed by the firm, and  
18 was an investor in Six4Three, I required that he execute the Protective Order certification before  
19 giving him access to Facebook's confidential information. Initially Mr. Scaramellino was given  
20 access to Facebook's confidential documents but not highly confidential documents. Therefore,  
21 Mr. Scaramellino struck out "Highly Confidential Information" on the certification that he  
22 executed. After he executed the certification, Mr. Scaramellino was given access to the  
23 confidential files on the document hosting platform. As the litigation progressed, I required Mr.  
24 Scaramellino's assistance with preparation of deposition outlines and pleadings that included  
25 Facebook's highly confidential documents as well as confidential documents. In addition, the  
26 Court had placed no restrictions on Mr. Scaramellino's involvement as a member of the legal  
27 team. I therefore permitted Mr. Scaramellino to access Facebook's highly confidential  
28

1 documents. Mr. Scaramellino understood that strict compliance with the Protective Order was  
2 required.

3       6. From time to time, I determined that it was necessary for the prosecution of the  
4 litigation to share Facebook's confidential information with Six4Three's Managing Director,  
5 Ted Kramer, and therefore my firm and the legal team disclosed Facebook confidential  
6 information to him. However, all members of the legal team dealing with Mr. Kramer  
7 understood that he could not have access to highly confidential information. As an officer of a  
8 party to the litigation, Mr. Kramer was not required to execute the Protective Order certification.  
9

10      7. My firm engaged [Redacted] on January 6, 2017 to review Facebook's  
11 documents to assist us in identifying potential deposition and trial witnesses. We provided the  
12 Stipulated Protective Order and blank certification to [Redacted] on January 6, 2017, and she  
13 executed the certification on the same date. A copy of [Redacted] executed certification is  
14 attached hereto as Exhibit B. After she executed the certification, [Redacted] was granted access  
15 to Facebook's confidential and highly confidential information. [Redacted] was granted access  
16 to the Relativity document hosting platform. [Redacted] has affirmed that she revealed and  
17 discussed Facebook's confidential and highly confidential information only with me, Mr.  
18 Kruzer, and Mr. Scaramellino. She has affirmed that she stored and maintained Facebook's  
19 confidential and highly confidential information in a secure location. I terminated [Redacted]  
20 engagement with my firm in early January, 2019, and asked her to return or destroy all of  
21 Facebook's confidential and highly confidential information. On January 24, 2019, [Redacted]  
22 confirmed to me that she had returned and destroyed all of Facebook's confidential and highly  
23 confidential information between January 4, 2019 and January 24, 2019. A copy of [Redacted]  
24 declaration ordered in Case Management Order No. 19 is attached hereto as Exhibit C.  
25

26      8. My firm engaged [Redacted] to assist the legal team with analysis of  
27 Facebook's privilege logs. [Redacted] was provided the Stipulated Protective Order and blank  
28 certification in early August, 2017, and he executed the certification on August 4, 2017. A copy  
of [Redacted] executed certification is attached hereto as Exhibit D. My firm did not provide

1           Redacted with any Facebook confidential or highly confidential information. To the best of  
2 my knowledge, the only member of Six4Three's legal team who communicated with Redacted  
3 Redacted Mr. Scaramellino, and Redacted involvement was limited to the analysis of  
4 Facebook's privilege logs.

5           9. My firm engaged Redacted to assist us in reviewing Facebook's  
6 arguments related to digital privacy issues. We provided a copy of the Stipulated Protective  
7 Order and blank certification to Redacted on May 10, 2018. He executed the certification on  
8 May 14, 2018. A copy of Redacted executed certification is attached hereto as Exhibit E.  
9 My firm provided Facebook confidential and highly confidential information to him in May and  
10 June, 2018, after he executed the certification. I terminated my firm's engagement with Redacted  
11 Redacted in early January, 2019, and directed him to return or destroy all Facebook confidential  
12 information that he had in his possession, including all documents referring to Facebook's  
13 confidential documents, and to confirm that he had done so. On January 11, 2019, Redacted  
14 confirmed in writing that he had deleted all of Facebook's documents, and asked if he should  
15 also destroy reports and filings referring to Facebook's confidential information. In response, I  
16 instructed him to destroy everything referring to Facebook's confidential information.

17           10. I am not able to comply with ¶3 of Case Management Order No. 19 directing  
18 Six4Three to serve a verified declaration of Mr. Dehaye despite good faith efforts to do so, as  
19 follows. As set forth above, I terminated my firm's engagement with Redacted in January,  
20 2019, so he has no current relationship with my firm. On March 1, 2019, after receiving Case  
21 Management Order No. 19, I informed Redacted by email that the Court had ordered him to  
22 provide a verified declaration by March 5, 2019. I sent him a draft declaration on March 3,  
23 2019 for his review. Later in the day on March 4, 2019, I received an email from Mr. Ravi  
24 Naik, an attorney with a London law firm Irvine, Thanyi, Natas Solicitors, informing me that his  
25 firm has been instructed by Redacted, and asking me to provide Case Management Order no.  
26 19 to him. I sent the Order and my February 28, 2019 declaration to Mr. Naik shortly  
27 thereafter. On March 4, 2019, Mr. Naik sent another email asking me to provide Facebook's ex  
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parte application and any related documents. I sent him Facebook's application and other papers submitted regarding Facebook's application shortly thereafter. Having no response from Mr. Naik or [Redacted], I emailed Mr. Naik again this morning asking him whether [Redacted] would provide a declaration in compliance with the Order. As of the time I executed this Declaration, I have not received a declaration of [Redacted]. I did, however, receive correspondence sent from Mr. Naik to Facebook's counsel, Ms. Mehta, at 2:42 p.m. EST today, which I have attached as Exhibit F. Mr. Naik's letter to Ms. Mehta confirms that [Redacted] deleted all Facebook confidential and highly confidential documents he was provided including internal case summaries.

10        11. Case Management Order no. 19, ¶2 directs me to produce fully executed  
11 Certifications of witnesses. I believe that Ali Partovi, a deposition witness, executed the  
12 Protective Order certification during a break at his deposition on October 10, 2017. I have been  
13 unable to locate a copy of a certification that he executed, and therefore I have not been able to  
14 produce it.

12. To the best of my knowledge, the individuals identified above are the only  
13 persons to whom my firm provided Facebook's confidential and highly confidential  
14 information, and such information was provided in conformance with the Protective Order. At  
15 no time did my firm direct, authorize, condone, or otherwise sanction the release, disclosure, or  
16 commentary by Mr. Kramer, Mr. Scaramellino, experts and consultants of any confidential or  
17 highly confidential information to any third party. Other than the disclosure of Facebook  
18 information to the DCMS Committee by Mr. Kramer in November 2018, I am not aware of any  
19 such activity.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 5, 2019 at Boston, Massachusetts.

David S. Godkin  
David S. Godkin

# **EXHIBIT A**

## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 (“Order”). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or ~~Highly Confidential Information~~ to anyone, except as allowed by the Order. I will maintain all such Confidential Information or ~~Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or ~~Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or ~~Highly Confidential Information~~. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint Basil P. Fthenakis located at the address of  
19 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

22 I declare under penalty of perjury that the foregoing is true and correct and that this  
23 certificate is executed this 1<sup>st</sup> day of December, 2016, at 9:00AM

Bv

Address: RedactedRedacted

Redacted

Phone: Redacted

## **EXHIBIT B**

## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis of Criterion Law located at the address of  
2225 E. Bayshore Road, Palo Alto CA 94303 as my California agent for service of process in  
connection with this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

22 I declare under penalty of perjury that the foregoing is true and correct and that this  
23 certificate is executed this 6 day of January, 2018, at 4:30pm

By: Redacted

**Address:** Redacted

**Redacted**

Phone:

# **EXHIBIT C**

1 James A. Murphy – 062223  
JMURPHY@mpbf.com  
2 James A. Lassart – 40913  
JLassart@mpbf.com  
3 Joseph S. Leveroni – 304721  
JLeveroni@mpbf.com  
4 MURPHY, PEARSON, BRADLEY & FEENEY  
88 Kearny Street, 10<sup>th</sup> Floor  
5 San Francisco, CA 94108 5530  
Telephone: (415) 788-1900  
6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel  
David S. Godkin (admitted *pro hac vice*)  
8 James E. Kruzer (admitted *pro hac vice*)  
Birnbaum & Godkin, LLP  
9 280 Summer Street  
Boston, MA 02210  
10 Telephone: (617) 307-6100  
Facsimile: (617) 307-6101  
11 godkin@birnbaumgodkin.com  
kruzer@birnbaumgodkin.com  
12

13 SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited  
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware  
corporation;  
19 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
20 JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
21 DOES 1 through 50, inclusive,  
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23 Defendants.  
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Case No. CIV 533328

Assigned For All Purposes To  
Hon. V. Raymond Swope, Department 23

**DECLARATION OF Redacted**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, Redacted , declare:

2       1. I am over the age of 18. I make the following statements in response to Case  
3 Management Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to  
4 testify, I could and would competently testify thereto.

5       2. I received a copy of the Stipulated Protective Order and blank certification in this action  
6 on January 6, 2017.

7       3. I executed the certification on January 6, 2017.

8       4. I was able to access Facebook's confidential and highly confidential information after I  
9 executed the certification on January 6, 2017.

10      5. I have not revealed Facebook's confidential or highly confidential information to  
11 anyone other than Six4Three's counsel (David S. Godkin and James Kruzer) and Thomas  
12 Scaramellino, who I understood was working with Mr. Godkin's firm as part of Six4Three's legal  
13 team. I have not discussed Facebook's confidential or highly confidential information with anyone  
14 other than Six4Three's counsel and Mr. Scaramellino. As used herein, "Facebook's confidential or  
15 highly confidential information" includes all information copied or extracted from or reflecting the  
16 confidential or highly confidential information, all copies, excerpts, summaries or compilations of  
17 confidential or highly confidential information, and any testimony, conversations or presentations by  
18 parties or their counsel that might reveal confidential or highly confidential information. I stored and  
19 maintained Facebook's confidential and highly confidential information in a secure location.

20      6. I returned to Mr. Godkin's firm and destroyed all Facebook confidential and highly  
21 confidential information in my custody or control between January 4, 2019 and January 24, 2019.

22      7. I confirmed to Mr. Godkin my return and destruction of all Facebook confidential and  
23 highly confidential information on January 24, 2019. I no longer have access to any Facebook  
24 confidential and highly confidential information.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct.

3 Executed March 4, 2019 at **Redacted**.

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5 **Redacted**

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## **EXHIBIT D**

## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIVS33328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint Basil P. Fthenakis located at the address of  
19 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

22 I declare under penalty of perjury that the foregoing is true and correct and that this  
23 certificate is executed this 4 day of August , 2016 at 16:11 EST

By: [REDACTED] Redacted

Address: [REDACTED] [REDACTED] [REDACTED] Redacted

Phone: Redacted

# **EXHIBIT E**

## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

7 I agree to be bound by the Order and I understand and acknowledge that failure to so  
8 comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal  
9 the Confidential Information or Highly Confidential Information to anyone, except as allowed by  
10 the Order. I will maintain all such Confidential Information or Highly Confidential Information,  
11 including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent  
12 unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will  
13 return the Confidential Information or Highly Confidential Information, including copies, notes,  
14 or other transcriptions made therefrom, to the counsel who provided me with the Confidential  
15 Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San  
16 Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement  
17 proceedings occur after termination of this action.

18 I hereby appoint Stuart G. Gross of Klein & Gross LLP located at the address of  
19 The Embarcadero, Pier 9, Suite 100, SF, CA 94111 as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

I declare under penalty of perjury that the foregoing is true and correct and that this  
certificate is executed this 14th day of May 2018 XXXX at Redacted

**Redacted**

Redacted

Redacted

Redacted

Phone: Redacted

# **EXHIBIT F**

**REDACTED FOR PUBLIC FILING**

1  
2                   **CERTIFICATE OF SERVICE**  
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5                   I, Jennifer Cuellar, declare:  
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8                   I am a citizen of the United States, am over the age of eighteen years, and am not a party to or  
9 interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San  
10 Francisco, California 94108.  
11

12                   On March 18, 2019, I served the following document(s) on the parties in the within action:  
13

14                   **DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR  
15                   PUBLIC FILING**

16                   **SUPPLEMENTAL DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19  
17                   REDACTED FOR PUBLIC FILING**

18                   **DECLARATION OF REDACTED, REDACTED FOR PUBLIC FILING**

19                   X                   **VIA MAIL:** I am familiar with the business practice for collection and processing of mail.  
20                   The above-described document(s) will be enclosed in a sealed envelope, with first class  
21                   postage thereon fully prepaid, and deposited with the United States Postal Service at San  
22                   Francisco, California on this date, addressed as listed below.

23  
24                   Six4Three, LLC  
25                   1267 Chestnut Street, Apt. 6  
26                   San Francisco, CA 94109  
27

28                   Six4Three, LLC  
29                   2098 8<sup>th</sup> Avenue, 51  
30                   New York, NY 10026  
31

32                   Superior Court of California County of San Mateo  
33                   Department 23  
34                   400 County Center  
35                   Redwood City, CA 94063  
36

37                   X                   **VIA E-MAIL:** I attached the above-described document(s) to an e-mail message, and  
38                   invoked the send command at approximately \_\_\_\_\_ AM/PM to transmit the e-mail  
39                   message to the person(s) at the e-mail address(es) listed below. My email address is  
40                   jcuellar@mpbf.com  
41

42                   Computer Law Group, LLP  
43                   401 Florence Street  
44                   Palo Alto, CA 94301  
45                   Email: jrusso@computerlaw.com  
46                   csargent@computerlaw.com  
47

48                   Attorneys for Theodore Kramer and Thomas  
49                   Scaramellino  
50

51                   Theodore Kramer  
52                   Email: Theodore.kramer@protonmail.com  
53

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3 525 Market Street, 17<sup>th</sup> Floor  
4 San Francisco, CA 94105  
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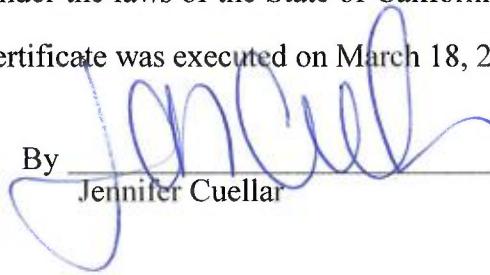
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15 Durie Tangri  
16 217 Leidesdorff Street  
17 San Francisco, CA 94111  
18 Email: SERVICE-SIX4THREE@durietangri.com

Attorneys for Facebook, Inc.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
20 a true and correct statement and that this Certificate was executed on March 18, 2019.  
21  
22  
23  
24  
25  
26  
27  
28

By   
Jennifer Cuellar

# **EXHIBIT 2**

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**ENDORSED FILED**  
**SAN MATEO COUNTY**

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28 MAR 15 2019

Clerk or the Superior Court  
By R. Huerta  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

**ORDER RE: DEFENDANT FACEBOOK  
INC.'S MOTION TO OPEN DISCOVERY  
AND TO COMPEL**

Assigned for All Purposes to  
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

Defendant FACEBOOK, INC.'s ("Facebook") Motion to Open Discovery and to Compel came on for hearing on March 15, 2019 at 10:00 a.m. in Department 23 of this Court before the Honorable V. Raymond Swope. Sonal Mehta, Joshua Lerner, Laura Miller, Catherine Kim, and Zachary Abrahamson of Durie Tangri and Natalie Naugle of Facebook, Inc. appeared for Defendants. David Godkin of Birnbaum & Godkin and Stuart Gross of Gross & Klein appeared for Plaintiff. James Murphy of Murphy, Pearson, Bradley & Feeney appeared on behalf of Mr. Godkin as personal counsel. Donald Sullivan of Wilson, Elser, Moskowitz, Edelman & Dicker appeared on behalf of Mr. Gross as personal counsel. Jack Russo of ComputerLaw Group appeared on behalf of individuals Theodore Kramer and Thomas Scaramellino as personal counsel..

Upon due consideration of the briefs and evidence presented, and the oral argument of counsel for the parties, and having taken the matter under submission,

///

///

1 IT IS HEREBY ORDERED as follows:

2 In its discretion, the Court *sua sponte* reconsiders its ruling on the record on December 17,  
3 2018, in vacating its prior "order reopening discovery for the limited purpose of investigating the  
4 breach of the court orders" (Russo Dec. ISO Kramer Response, filed Jan. 17, 2019, Ex. 2, p. 5:3-5)  
5 and memorialized in the Order re: Discovery, issued on January 16, 2019, in light of new facts  
6 presented in this motion. (Code Civ. Proc. § 1008, subd. (c).)

7 The leaks of sealed or stricken court filings and the confidential documents attached outside  
8 of DCMS publication have continued. (See Am. CM Order no. 19, issued Mar. 4, 2019.)

9 **1. Crime-Fraud Exception**

10 Facebook has made a *prima facie* showing that the crime-fraud exception applies based on  
11 the instant facts.

12 Evidence Code section 956 codifies the common law rule that the privilege  
13 protecting confidential attorney-client communications is lost if the client seeks legal  
14 assistance to plan or perpetrate a crime or fraud. [Citation.] The crime-fraud  
exception expressly applies to communications ordinarily shielded by the attorney-  
client privilege. (Evid. Code, § 954.)

15  
16 (*BP Alaska Exploration, Inc. v. Sup. Ct.* (1988) 199 Cal.App.3d 1240, 1249 ("BP Alaska").)

17 To invoke the crime-fraud exception, the proponent must make a *prima facie*  
18 showing that the services of the attorney were sought or obtained to aid someone in  
19 committing a crime or fraud. Evidence Code section 956 does not require a  
20 completed crime or fraud. It applies to attorney communications sought to enable the  
client to *plan to commit* a fraud, whether the fraud is successful or not. It is the intent  
of the client upon which attention must be focused and not that of the lawyers.

21 (*Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 220 (internal citations,  
22 quotations omitted) (original emphasis).)

23 Plaintiff SIX4THREE, LLC's ("Six4Three") contention that "Facebook has taken a handful  
24 of quotations out of *context* in an attempt to spin a narrative—that Six4Three and its counsel have  
25 plotted for years to reveal Facebook's confidential information, notwithstanding the protective  
26 order" is belied by the evidence submitted in support of this motion, as discussed *infra*. (Six4Three  
27 Opp., filed Feb. 27, 2019, p. 3:24 - 4:3 (original emphasis).) Furthermore, Mr. Godkin's statement  
28 that "[t]he summary of 643's publicly-filed Fifth Amended Complaint that my firm sent to various

1 media and government entities summarizes the complaint's allegations and cites to the Fifth  
2 Amended Complaint" is equally not well taken as discussed *infra*. (Godkin Dec. ISO Six4Three  
3 Opp., filed Feb. 27, 2019, ¶ 8 ("Godkin Dec."). *See* Six4Three Opp., *supra*, at p. 5:5-12.)

4 It is undisputed that certain information produced in this action are subject to a Stipulated  
5 Protective Order. Specifically, the parties stipulated,

6 Any persons receiving Confidential Information or Highly Confidential Information  
7 shall not reveal or discuss such information to or with any person who is not entitled  
to receive such information, except as set forth herein.

8 (Stip. Prot. Order, issued Oct. 24, 2016, ¶ 6.) Facebook began producing "documents marked  
9 'confidential' and 'highly confidential' in December 2016. (Godkin Dec., *supra*, at ¶ 5.)

10 Counsel for Six4Three have made multiple representations to the Court that "there have been  
11 no communications with third parties regarding Facebook's Confidential Information." (Miller Dec.  
12 ISO Motion, filed Jan. 9, 2019, Ex. 1, p. 36:8-10 ("Miller Dec."). See also Godkin Dec. ISO Godkin  
13 Resp. to Ex Parte, filed Feb. 28, 2019, ¶ 5 ("B&G only provided third parties with Facebook's  
14 confidential or highly confidential information in conformance with the Protective Order").)

15 These statements are directly contradicted by the communications Six4Three and its counsel  
16 had with third parties. The summaries at issue not only summarize the allegations, but also analyze  
17 in detail the confidential information obtained from Facebook. For instance, in an email exchange  
18 initiated by Mr. Godkin to the Information Commissioner's Office, with the subject line, "Extensive  
19 evidence regarding Facebook's treatment of friend data and user privacy," Mr. Godkin introduced  
20 himself and stated that he and his firm had "obtained extensive discovery of communications  
21 between Zuckerberg and numerous executives . . . that [they] believe[] is highly relevant to the  
22 Cambridge Analytica investigation . . ." (Miller Dec., *supra*, at Ex. 2 (bates no. BG001353). See  
23 also *id.* at Ex. 12 (bates no. BG000152), 13 (BG000154), 14 (BG000156), 24 (BG001330), 25  
24 (BG001357), 26 (BG001825).) Notably, Mr. Godkin initiated the email exchanges to: (1) California  
25 legislators (Miller Dec., *supra*, at Ex. 12 (bates no. BG000152)); (2) Oregon Department of Justice  
26 (Ex. 14 (BG000156)); (3) State of Massachusetts (Ex. 24 (BG001330)); and (4) Federal Trade  
27 Commission (Ex. 26 (BG001825)).

28 ///

1           In the email, Six4Three's counsel explicitly writes that the summary is one of evidence and  
2 not the allegations. On their face, these emails demonstrate that the summary went beyond the four  
3 corners of the Fifth Amended Complaint, and included counsel's own impressions and analysis of  
4 Facebook's confidential information included in the summary. Counsel went further by inviting the  
5 recipient to find an "appropriate mechanism" to permit disclosure.

6           This summary does not do the wealth of evidence we have obtained justice, which is  
7 why I'm hoping we can speak with your office to determine if there is an appropriate  
mechanism for your team to evaluate the evidence yourselves.

8 (Miller Dec., *supra*, at Ex. 2 (BG001353). See also *id.* at Ex. 12 (bates no. BG000152), 13  
9 (BG000154), 14 (BG000156), 24 (BG001330), 25 (BG001357), 26 (BG001825).) The summary  
10 also summarizes the contents of "internal emails." (*Id.*) The closing paragraph of that email further  
11 demonstrates the summary revealed or discussed confidential information obtained from Facebook,  
12 and not the allegations of any complaint.

13           As you can see, there is a lot here, and it would take months or even years for ICO  
14 to obtain discovery of this information from Facebook. We hope to identify an  
appropriate mechanism for your team to access it and determine its relevance to your  
15 current efforts.

16 (Miller Dec., *supra*, at Ex. 2 (BG001353). See also *id.* at Ex. 12 (bates no. BG000152), 13  
17 (BG000154), 14 (BG000156), 24 (BG001330), 25 (BG001357), 26 (BG001825).) Lastly, the  
18 summary does not cite to the paragraphs of the Fifth Amended Complaint as asserted by Six4Three.  
19 (Compare Six4Three Opp., *supra*, at p. 5:9-12; with Miller Dec., *supra*, at Ex. 2 (BG001353), 12  
20 (bates no. BG000152), 13 (BG000154), 14 (BG000156), 24 (BG001330), 25 (BG001357), 26  
21 (BG001825).)

22           In addition to the summary of evidence, several written communications have been produced  
23 by Six4Three's counsel pursuant to stipulation that involve Six4Three, its principal Mr. Kramer, and  
24 its counsel, including Mr. Godkin, Mr. Gross, Mr. Kruzer, and Mr. Scaramellino, revealing or  
25 discussing confidential information produced by Facebook with third parties and using a retained  
26 expert as a source for the news media as follows:

27           (1) "We have uncovered evidence supporting these claims and believe Facebook's conduct  
28 also includes competitive restrictions against over 40,000 software applications" (Miller  
Dec., *supra*, at Ex. 3, (SIX4THREE00015917));

- 1
- 2 (2) "There is an opportunity to unseal about 3,000 pages of hot documents that we believe  
3 very clearly prove the allegations in our complaint" (Miller Dec., *supra*, at Ex. 6  
3 (BG001308));
- 4 (3) "We are extremely eager to do the story now that there is an opportunity for the documents  
5 to be released. I understand that Collins said that will happen in a week, but I'm sure they  
6 could leak before – and of course we want to be first. The challenge is that until now we  
6 have only talked off the record, so it will be hard to use material from our conversations if  
I don't hear from you." (Miller Dec., *supra*, at Ex. 15 (BG000716));
- 7 (4) "We have obtained emails from Zuckerberg and numerous other Facebook executives and  
8 employees . . ." (Miller Dec., *supra*, at Ex. 16 (BG000425)); and
- 9 (5) The key thing with [redacted] is that if the article identifies him as an expert witness or  
10 bases his confirmation of the allegations on the fact that he has reviewed the evidence . . .  
10 . ." (Miller Dec., *supra*, at Ex. 19 (BG0006403); see Ex. 18 (BG006394)).

11

12 Notably, Six4Three posits no argument or citation to evidence that the references to the evidence  
13 made in these communications came from non-confidential information or sources. Furthermore,  
14 these communications were mostly made prior to Mr. Kramer's disclosure to the DCMS or before  
15 DCMS publication. (See Six4Three Opp., *supra*, at p. 4:6-8) The exception is Miller Declaration,  
16 Exhibit 15, which is a communication between the Washington Post and Six4Three and its counsel  
17 made after Mr. Kramer's disclosure but before DCMS publication.

18 To that end, Mr. Gross' attempt to minimize his participation in these communications is not  
19 well taken. (See Six4Three Opp., *supra*, at p. 6:10-21.) First, Mr. Gross stated his firm, Gross &  
20 Klein LLP, is contractually obligated to follow the direction of lead counsel Birnbaum & Godkin,  
21 LLP in this action. In its retainer agreement with Six4Three,

22 The Client acknowledges that any action taken by the Firm will be at the direction of  
23 Birnbaum & Godkin, LLP ("Lead Counsel"). It its [*sic*] role as local counsel, the  
24 Firm will not be responsible for developing legal strategy, implementing legal  
25 strategy, monitoring filing deadlines, or otherwise directing the litigation. If, at any  
point in the Client's representation by the Firm, the Client would like to modify this  
scope of representation, the Client shall advise the Firm and a new retainer agreement  
shall be negotiated.

26

27 (Gross Dec. ISO Withdraw, filed Jan. 24, 2019, Attachment 2, ¶ 4.) Mr. Gross states that the retainer  
28 agreement was never modified. (*Id.*) Accordingly, any communications with Six4Three would have

1 been at the behest of Birnbaum & Godkin. On November 27, 2018, Mr. Gross was cc:ed on an  
2 email from the Washington Post and to Mr. Kramer, principal of Six4Three, and Mr. Scaramellino,  
3 a member of Six4Three's legal team, wherein the author stated,

4 I'm getting a bit worried since I have not heard from you in several days. We are  
5 extremely eager to do the story now that there is an opportunity for the documents to  
6 be released. I understand that Collins said that will happen in a week, but I'm sure  
7 they could leak before – and of course we want to be first. The challenge is that until  
8 now we have only talked off the record, so it will be hard to use material from our  
9 conversations if I don't hear from you. In addition, the trove is big as we know, and  
I know you had promised to offer some guidance on how to go through it. [¶] I would  
really appreciate if you could let me know what is happening either way – even if it  
is to say that you can't speak. You can reach me on my cell or on Signal at [redacted]."

10 (Miller Dec., *supra*, at Ex. 15 (BG000716).) Notably, Six4Three does not posit argument and Mr.  
11 Gross does not state in a declaration that he did not receive or read that email. (See Six4Three Opp.,  
12 *supra*, at p. 6:10-24.) Six4Three did not file objections to the evidence proffered by Facebook. This  
13 email demonstrates that there were conversations with a third party prior to DCMS publication  
14 revealing or discussing Facebook's confidential information upon which Mr. Gross was a recipient  
15 to all or part of those communications. Although Mr. Gross was contractually responsible for  
16 submitting to the efforts of Birnbaum & Godkin, LLP as lead counsel, Mr. Gross nevertheless had  
17 an independent duty as local counsel.

18 Furthermore, from the outset of his firm's retention by Six4Three, Mr. Godkin required Mr.  
19 Scaramellino to work on Six4Three's legal team.

20 Mr. Scaramellino, Mr. Kramer and I recognized that filing a lawsuit against  
21 Facebook would require substantial legal resources. Because my firm is small, and  
22 because 643 is a defunct startup with very limited resources, I concluded that it would  
be appropriate and helpful for Mr. Scaramellino to work with me and my firm as part  
23 of the legal team. . . . As such, Mr. Scaramellino's agreement to work with me on  
the litigation team was a condition of Birnbaum & Godkin's engagement with 643. .

24 (Miller Dec., *supra*, at Ex. 9, ¶ 6.) Mr. Godkin has previously advised the Court of his direct  
25 supervision over Mr. Scaramellino in this action.

26 Accordingly, Mr. Scaramellino has been working with me and my firm as a member  
27 of the legal team since my firm was retained by 643, with 643's full knowledge and  
approval. Mr. Scaramellino is performing legal research, fact investigation, assembly  
28 of data and information, and preparation of pleadings, and any other work that I  
decide will assist me and my firm in carrying out the representation of 643. All of

1 the tasks performed by Mr. Scaramellino are performed at my direction and under  
2 my supervision. All of the work performed by Mr. Scaramellino has been reviewed  
3 by me or another attorney at my firm, and merged into my firm's work product. Mr.  
4 Scaramellino is not being paid for his work. His role is akin to that of a law clerk or  
5 paralegal, similar to his roles at Davis Polk and SDNY.

6 (Miller Dec., *supra*, at Ex. 9, ¶ 7.) The conduct of Mr. Scaramellino in this action is imputed on  
7 Birnbaum & Godkin, LLP.

8 Moreover, these communications with third parties fall outside of the ambit of Rules of  
9 Professional Conduct, rule 3.6(b)(1)-(5). (See Six4Three Opp., *supra*, at p. 5:17-22.) Rather, rule  
10 3.6 permits the lawyer to state:

11 (1) the claim, offense or defense involved and, except when prohibited by law, the  
12 identity of the persons involved;

13 (2) information contained in a public record;

14 (3) that an investigation of a matter is in progress;

15 (4) the scheduling or result of any step in litigation;

16 (5) a request for assistance in obtaining evidence and information necessary thereto;  
17 . . . .

18 (Rules of Prof. Conduct, rule 3.6(b)(1) – (5).) The aforementioned emails of Six4Three's counsel  
19 demonstrate that counsel's summary of evidence to third parties exceeds the scope of this rule.

20 The evidence reflects that Six4Three, through its principal Mr. Kramer, utilized the services  
21 of counsel to aid in committing a crime or fraud. Prior to traveling to the United Kingdom with  
22 documents containing Facebook's confidential information, Mr. Kramer communicated with Mr.  
23 Collins on finding an "appropriate mechanism" to disclose to DCMS similar to the communications  
24 of Six4Three's counsel to target third parties.

25 On October 1, 2018, Mr. Kramer initiated a communication to Mr. Collins by way of an  
26 email with the subject line, "Extensive evidence relevant to Facebook's data and privacy abuses."  
27 (Miller Dec., *supra*, at Ex. 45, ¶ 5, Ex. 1 ("Kramer Dec.")) Although Mr. Kramer stated that he was  
28 "summariz[ing] the public information from our case" for Mr. Collins, the summary is essentially  
the same as the one sent by Six4Three's counsel. (*Compare* Kramer Dec., *supra*, at ¶ 5, Ex. 1; *with*

1 Miller Dec., *supra*, at Ex. 2 (BG001353), 12 (bates no. BG000152), 13 (BG000154), 14  
2 (BG000156), 24 (BG001330), 25 (BG001357), 26 (BG001825).)

3 On November 3, 2018, in response, Mr. Collins provided his personal email and mobile  
4 phone number to Mr. Kramer. (Kramer Dec., Ex. 2.) In that same email, Mr. Collins also inquired  
5 as to the documents in Mr. Kramer's possession. Specifically,

6 Unredacted copy of Plaintiff Six4Three's Corrected Memorandum of Points and  
7 Authorities in Opposition to Defendants' Special Motions to Strike (Anti-SLAPP)  
8 filed on May 18, 2018;

9 Unredacted copy of the Declaration of David S. Godkin in Support of Six4Three's  
10 Anti-SLAPP Opposition ("Godkin Anti-SLAPP Declaration") filed concurrently  
11 therewith on May 18, 2018;

12 Exhibits 1-212 to the Godkin Anti-SLAPP Declaration filed on May 18, 2018;

13 All documents containing summaries or analyses of any of the exhibits to the Godkin  
14 Anti-SLAPP Declaration filed on May 18, 2018.

15 (Kramer Dec., Ex. 2.) On November 4, 2018, Mr. Kramer confirmed his possession and shared his  
16 own personal view of those documents.

17 Thanks for your note. I can confirm that your description of the documents in my  
18 possession is accurate.  
19 ...  
20 My personal view is that the documents you list in your note contain information  
21 highly relevant to your investigation regarding Facebook's data practices, and further  
22 that it would be impossible for the investigation to reach any legitimate  
23 conclusions without a thorough review of this information.

24 (Kramer Dec., Ex. 3.) Mr. Kramer also invited Mr. Collins to start an "appropriate mechanism" for  
25 disclosure, the conversation of which implicates Six4Three's counsel.

26 These documents are subject to confidentiality under a protective order entered in  
27 San Mateo Superior Court in California. Carole mentioned you may be seeking to  
28 subpoena the documents. I will agree to accept service of a subpoena mailed to my  
home address: [redacted]

Upon receipt of any subpoena, I would be required to notify Facebook. If Facebook  
wishes to prevent my compliance, it will need to take action in appropriate fora.

1       If you wish to speak, it is best we setup a phone call with a conference line. We  
2       always have a member of our legal team on the line to ensure we have witnesses of  
3       what was discussed in the event Facebook takes retributive action against us.

4       (Kramer Dec., *supra*, Ex. 3.) Approximately one week later on November 12, 2018, Mr. Kramer  
5       responded that he could not "voluntarily disclose" the documents. (*Id.* at Ex. 4.) On November 13,  
6       2018, Mr. Collins emailed Mr. Kramer, "Would we be clear to publish what you have already sent  
7       us as written evidence without there being any repercussions for you? [Whilst we have immunity,  
8       you still need to consider your own position]" (*Id.* at Ex. 5.) On November 19, 2018, Mr. Kramer  
9       arrived in London. (*Id.* at ¶ 11.)

10      Still left unexplained is how Six4Three's counsel caused Facebook's confidential  
11     information and highly confidential received pursuant to the Stipulated Protective Order to be  
12     uploaded and available for viewing and download on its client, Six4Three's Dropbox account no  
13     later than October 1, 2018. Six4Three's counsel admits it was responsible for the safekeeping of that  
14     confidential information.

15      Mr. Godkin: Your Honor, what I learned last week for the first time was that the  
16     documents would have been placed on Six4Three's Dropbox system.

17      The Court: How?

18      Mr. Godkin: I don't know.

19      The Court: Why?

20      Mr. Godkin: I don't know that either. But that is precisely the problem here that has  
21     caused us to have a serious issue. You're absolutely right that the – the documents  
22     that were produced by Facebook in my understanding have always been completely  
23     secure from Mr. Kramer. The mistake that was made here was that pleadings that  
24     referenced those documents had been placed without my firm's knowledge onto  
25     Six4Three's Dropbox system. That is I believe where the mistake was made. And my  
26     firm obviously has to take responsibility for failing to adequately protect that from  
27     happening and we do.

28      (Nov. 30, 2018 Transcript, p. 23:6-22.)

29      Notably, in a subsequent declaration, Mr. Godkin acknowledges only his firm and its  
30     employees had access to Facebook's confidential and highly confidential information.

1 My firm has stored and maintained Facebook's confidential information on a  
2 password-protected document hosting platform (Relativity) and on the firm's secure  
3 server. [¶] Only firm employees have access to the firm's secure server. [¶] Thomas  
4 Scaramellino assisted with the litigation as an outside member of the legal team. He  
was not given access to the firm's secure server.

5 (Godkin Dec. re: CM Order no. 19, executed Mar. 5, 2019, p 5:17-18.) Notably, Mr. Godkin does  
6 not state the security of his firm's server or document hosting platform has been compromised. One  
7 can only conclude that Birnbaum & Godkin caused Facebook's confidential and highly confidential  
8 information to be uploaded on Six4Three's Dropbox.

9 Based on the foregoing, the Court finds that Facebook has made a *prima facie* showing that  
10 the services of the Six4Three's counsel was sought or obtained to aid Six4Three in committing a  
11 crime or fraud and the crime-fraud exception applies.

12 **2. Depositions of Six4Three's Counsel**

13 Despite being highly disfavored, Facebook has demonstrated the necessity of deposing  
14 Six4Three's counsel and members of its legal team given the incongruities in their statements when  
15 compared to the evidence of their communications revealing or discussing confidential information  
16 with third parties and their overall handling of Facebook's confidential information. (*Spectra-*  
17 *Physics, Inc. v. Sup.Ct. (Teledyne, Inc.)* (1988) 198 Cal.App.3d 1487, 1494-95.)

18 As a threshold matter, there is evidence of oral conversations revealing or discussing  
19 Facebook's confidential information between Six4Three's counsel, its legal team, retained experts,  
20 its principal Mr. Kramer and third parties in contravention of Stipulated Protective Order, paragraph  
21 6, in documents produced by Birnbaum & Godkin, LLP pursuant to stipulation:

- 22 (1) The challenge is that until now we have only talked off the record, so it will be hard to use  
material from our conversations if I don't hear from you." (Miller Dec., *supra*, at Ex. 15  
(BG000716));
- 24 (2) "Ted mentioned that [redacted] can confirm some of our allegations in the complaint.  
25 Would he or others be willing to do so on the record? We are very much hoping that the  
first reporting of this can verify at least a significant portion of the allegations to mitigate  
26 the impact of FB's counter punch. Since we don't want to reveal [redacted] we are  
wondering who might fill this gap" (Miller Dec., *supra*, at Ex. 18);

27  
28

- (3) "The key thing with [redacted] is that if the article identifies him as an expert witness or bases his confirmation of the allegations on the fact that he has reviewed the evidence . . ." (Miller Dec., *supra*, at Ex. 19 (BG0006403));
  - (4) "I think anonymous quotes from [redacted] would be fine so long as he isn't identified as an expert witness" (Miller Dec., *supra*, at Ex. 48 (BG006401));
  - (5) In response to an email stating "the investigation team directly dealing with the Cambridge Analytica/FB file" who "will be in touch shortly", Mr. Godkin responded, "I am in arbitration for the next several days but am copying my colleague Jim Kruzer who I believe will be in the office and can coordinate" (Kim Dec. ISO Facebook Opp. to Withdraw, filed Jan. 17, 2019, Ex. 1 (BG001357) ("Kim Dec."));<sup>1</sup>
  - (6) "Many thanks for the call just now. Please meet David Godkin, lead counsel in the litigation I mentioned" (Kim Dec., *supra*, at Ex. 2 (BG001330));
  - (7) In response to an email asking when "there [is] a good time tomorrow that [redacted] and I can touch base on this," Mr. Godkin provided the same summary as discussed *supra* and responded, "Unfortunately I will be in arbitration starting tomorrow for the next few days, but my colleague Jim Kruzer who is working with me on the Facebook litigation . . . will touch base with you" and Mr. Kruzer subsequently set up a conference call (Kim Dec., *supra*, at Ex. 2 (BG01330));
  - (8) Mr. Kramer sent the summary and the target third party recipient inquired, "How would you like to proceed," and Mr. Kramer responded, "I would suggest as a next step that we setup a phone call with one of the attorneys on the case, Jim Kruzer, whom I've copied on this note" (Kim Dec., *supra*, at Ex. 5 (BG007096); and
  - (9) In emailing the summary, Mr. Godkin wrote, "I'm know [*sic*] you must be extremely busy, but I watched you on the news yesterday and the media's narrative around Cambridge Analytica is all wrong. You are in a unique position to correct it. Here is the truth below. I hope you do find time to explore it at some point. You have my contact information if you or your team frees up." (Kim Dec., *supra*, at Ex. 10 (BG001868)).

21 The Court finds the above references in emails to conference calls and oral communications  
22 involving Six4Three's counsel, its legal team, and Mr. Kramer with targeted third parties pertaining  
23 to Facebook's documents warrant these depositions. Furthermore, in a declaration, Mr. Gross does  
24 not affirmatively state he did not receive or read the emails he was cc:ed on, but rather he "did not

<sup>26</sup> <sup>1</sup> In the Notice of Motion, Facebook states, "This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities, and the Declaration of Laura E. Miller in support thereof, and all other pleadings, records, and papers filed in this action, any on any other evidence and argument as may be considered by the Court prior to its decision on the Motion." (Not. Mot. to Open Discovery, filed Jan. 8, 2019, p. 1:16-19.) Neither Six4Three nor its counsel objected to this evidence proffered by Facebook in opposition to the motions to be relieved as counsel.

1 pay much attention to these emails with the press on which I was simply copied." (Gross Dec. ISO  
2 Gross Resp. to Ex Parte, filed Feb. 28, 2019, ¶ 8.) The excuse of inattention does not shield Mr.  
3 Gross from deposition. It is apparent from the evidence that Six4Three's counsel was engaged in  
4 the "heavy lifting" of analyzing and summarizing Facebook's confidential information to third  
5 parties, and not merely acting in an advisory role to Six4Three.

6 Furthermore, this evidence is incongruous with statements made by Six4Three's counsel in  
7 declarations to the Court.

8 At no time did my firm direct, authorize, condone, or otherwise sanction the release,  
9 disclosure, or commentary by Mr. Kramer, Mr. Scaramellino, experts and  
consultants of any confidential or highly confidential information to any third party.

10  
11 (Godkin Dec. re: CM Order no. 19, *supra*, at p 5:17-18.)

12 At no time did I, my employees or my firm direct, authorize, condone, or otherwise  
13 sanction the release, disclosure, or commentary by Mr. Kramer, Mr. Scaramellino,  
experts and consultants of any confidential ~~or~~ highly confidential information to any  
14 third party.

15 (Godkin Suppl. Dec. re: CM Order no. 19, executed Mar. 6, 2019, p. 2:12-15.).

16 Furthermore, Mr. Scaramellino, a member of the Six4Three legal team and law clerk for  
17 Birnbaum & Godkin, LLP, contradicts Mr. Godkin.

18 At no time from my execution of the attached certification on December 1, 2016  
19 have I provided information subject to the Protective Order to any unauthorized  
individuals or outside the scope of Mr. Godkin's supervision or without Mr.  
20 Godkin's knowledge.

21 (Scaramellino Dec. re: CM Order no. 19, executed Mar. 14, 2019, ¶ 3.)

22 Lastly, Mr. Godkin contradicts himself in two of his declarations as to his handling of  
23 Facebook's highly confidential information. "As set forth above, B&G only provided third parties  
24 with Facebook's confidential or highly confidential information in conformance with the Protective  
25 Order." (Godkin Dec. ISO Godkin Resp. to Ex Parte, *supra*, at ¶ 5.) However, in a subsequent  
26 declaration, Mr. Godkin admits he provided highly confidential information to Mr. Scaramellino  
27 despite Mr. Scaramellino striking out "highly confidential information" from the certification he  
28 executed. (Godkin Dec. re: CM Order no. 19, *supra*, at ¶ 5.) Mr. Scaramellino should not have

1 received highly confidential information without executing the certification.

2       **3. Order**

3       Based on the foregoing, the Court GRANTS, IN PART, AND DENIES, IN PART,  
4 Facebook's Motion to Open Discovery and to Compel. The opening of discovery is limited to the  
5 revealing or discussing of Facebook's confidential information pursuant to Stipulated Protective  
6 Order, paragraph 6 and disclosures or providing thereof. Discovery of the merits of the action  
7 remain stayed pending the cross-appeals of the order on the anti-SLAPP motions.

8       Facebook's request for discovery based on the Notices of Deposition is premature. On  
9 November 30, 2018, Facebook served notices of deposition with requests for production of  
10 documents, and thus, documents need not be produced prior to the deposition date. (Code Civ. Proc.  
11 § 2025.220, subd. (b)(4). See Miller Decl., *supra*, at Ex. 33 – 36.)

12       Accordingly, the Court grants Facebook leave to serve its requests for production or  
13 subpoena duces tecum, whichever is the appropriate method, on Mr. Gross, Mr. Godkin, Mr.  
14 Kramer, and Mr. Scaramellino as enumerated in Appendix A to Facebook's Memorandum of Points  
15 and Authorities, received Jan. 9, 2019. A copy of Appendix A is attached as **Exhibit A**.

16       The attorney-client privilege is waived pursuant to the crime-fraud exception. A work  
17 product log shall be served for any documents withheld on those grounds.

18       The requests to compel depositions are premature given Facebook is requesting production  
19 of the documents prior to the deposition. Scheduling of depositions are contingent on production,  
20 which shall be the subject of a further discovery conference on April 26, 2019 at 2:00 p.m.

21       Lastly, the Court acknowledges that Mr. Kramer and Mr. Scaramellino's response and  
22 production to Appendix A will be greatly curtailed given the orders of this Court and will require  
23 searches of their preserved data by the forensic examiner.

24       In earlier proceedings, Six4Three and its counsel have expressed concern that the forensic  
25 examiner, Stroz Friedberg, is not truly a neutral third party forensic examiner because Facebook has  
26 refused to relinquish seeking Stroz Friedberg's expertise in this <sup>and</sup> other matters. Although the Court  
27 previously ordered Stroz Friedberg to conduct a limited search of logs based on *ex parte* relief, a  
28 neutral third party forensic examiner shall now be appointed.

1        Accordingly, the parties' counsel (not personal counsel) shall meet and confer and propose  
2 three neutral forensic examiners to the Court no later than March 22, 2019 to conduct searches on  
3 Mr. Kramer and Mr. Scaramellino's data currently in the possession, custody, and/or control of Stroz  
4 Friedberg.

5 The cost of the neutral third party forensic examiner will be borne solely by Facebook given  
6 Six4Three's inability to pay.

7 The Court will issue an order appointing the neutral third party forensic examiner and the  
8 transfer of all data and documents pertaining to chain of custody from Stroz Friedberg so that it is  
9 no longer in the possession, custody, and/or control of Stroz Friedberg. Stroz Friedberg shall file  
10 and serve a declaration of compliance. Stroz Friedberg shall still maintain all documents pertaining  
11 to chain of custody. The order for Stroz Friedberg not to disclose, discuss, or reveal any information  
12 obtained from the data in its possession, custody, or control outside of further order of the Court  
13 shall remain in effect.

14 The parties shall also meet and confer on the parameters of searches for electronic documents  
15 in the possession, custody, or control of the neutral third party forensic examiner. A discovery  
16 conference on the limited issues of the opening of discovery is set for April 26, 2019 at 2:00 p.m.

18 | IT IS SO ORDERED.

20 | DATED: March 15, 2019

V. RAYMOND SWOPE

**Honorable V. Raymond Swope  
Judge of the Superior Court**

## **Exhibit A**

1 DURIE TANGRI LLP  
2 SONAL N. MEHTA (SBN 222086)  
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4 JOSHUA H. LERNER (SBN 220755)  
5 jlerner@durietangri.com  
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7 lmiller@durietangri.com  
8 CATHERINE Y. KIM (SBN 308442)  
9 ckim@durietangri.com  
10 217 Leidesdorff Street  
11 San Francisco, CA 94111  
12 Telephone: 415-362-6666  
13 Facsimile: 415-236-6300

14 Attorneys for Defendants  
15 Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier  
16 Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF SAN MATEO

19 SIX4THREE, LLC, a Delaware limited liability  
20 company,

21 Plaintiff,

22 v.

23 FACEBOOK, INC., a Delaware corporation;  
24 MARK ZUCKERBERG, an individual;  
25 CHRISTOPHER COX, an individual;  
26 JAVIER OLIVAN, an individual;  
27 SAMUEL LESSIN, an individual;  
28 MICHAEL VERNAL, an individual;  
DOES 1-50, inclusive,

Defendants.

Electronically  
**RECEIVED**

1/9/2019

*[Signature]*  
CLERK OF THE SUPERIOR COURT  
SAN MATEO COUNTY

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond  
Swope, Dept. 23

APPENDIX A TO DEFENDANT FACEBOOK,  
INC.'S MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS  
MOTION TO OPEN DISCOVERY AND TO  
COMPEL

Date: February 7, 2019

Time: 9:00 a.m.

Dept: 23 (Complex Civil Litigation)

Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015

TRIAL DATE: April 25, 2019

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APPENDIX A TO FACEBOOK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF ITS MOTION TO OPEN DISCOVERY AND TO COMPEL / CASE NO. CIV 533328

## **REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1:**

Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference communications between Six4Three, including without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity regarding the Individual Defendants' Special Motion to Strike and for Attorney's Fees and Costs Pursuant to C.C.P. § 425.16 (anti-SLAPP) ("Individual Defendants' anti-SLAPP motion"), Six4Three's Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (anti-SLAPP) ("Six4Three's anti-SLAPP Opposition"), the Declaration of David S. Godkin in Opposition to Defendants' Special Motions to Strike (anti-SLAPP) ("Godkin Declaration") or exhibits thereto, or other Facebook confidential or highly confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS Committee").

### **REQUEST FOR PRODUCTION NO. 2:**

All communications between Six4Three, including without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any third party individual or entity regarding the Individual Defendants' anti-SLAPP motion, Six4Three's anti-SLAPP Opposition, the Godkin Declaration or exhibits thereto, or other Facebook confidential or highly confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the DCMS Committee.

### **REQUEST FOR PRODUCTION NO. 3:**

Documents sufficient to show the identity of all individuals or entities with whom Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any other agent or representative of Six4Three, discussed the Individual Defendants' anti-SLAPP motion, Six4Three's anti-SLAPP Opposition, the Godkin Declaration or exhibits thereto, or

other Facebook confidential or highly confidential information.

**REQUEST FOR PRODUCTION NO. 4:**

All emails and attachments exchanged between Mr. Kramer and Damian Collins, or any member or employee of the DCMS Committee or the U.K. Parliament.

**REQUEST FOR PRODUCTION NO. 5:**

All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer accessed from his laptop, including all available or recoverable information about what documents were uploaded to the account and by whom, what documents were downloaded from the account and by whom, what documents were deleted from the account and by whom, when the account was cached or synched locally and on what devices, and all individuals that had access to the account and when.

**REQUEST FOR PRODUCTION NO. 6:**

All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino, or any other agent, attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding the Individual Defendants' anti-SLAPP motion, Six4Three's anti-SLAPP Opposition, the Godkin Declaration or exhibits thereto, or other Facebook confidential or highly confidential information. For avoidance of doubt, this includes but is not limited to communications relating to contacts with the DCMS Committee, *The Guardian*, *The Observer*, or other third parties.

**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On January 9, 2019, I served the following documents in the manner described below:

**APPENDIX A TO DEFENDANT FACEBOOK, INC.'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF ITS MOTION TO OPEN DISCOVERY AND  
TO COMPEL**

- BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from [cortega@durietangri.com](mailto:cortega@durietangri.com) to the email addresses set forth below.

On the following part(ies) in this action:

Stuart G. Gross  
GROSS & KLEIN LLP  
The Embarcadero, Pier 9, Suite 100  
San Francisco, CA 94111  
[sgross@grosskleinlaw.com](mailto:sgross@grosskleinlaw.com)

David S. Godkin  
James Kruzer  
BIRNBAUM & GODKIN, LLP  
280 Summer Street  
Boston, MA 02210  
[godkin@birnbaumgodkin.com](mailto:godkin@birnbaumgodkin.com)  
[kruzer@birnbaumgodkin.com](mailto:kruzer@birnbaumgodkin.com)

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Six4Three, LLC*

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*Attorney for Gross & Klein LLP*

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[ecf@computerlaw.com](mailto:ecf@computerlaw.com)

*Attorney for Theodore Kramer and Thomas  
Scaramellino (individual capacities)*

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James A. Murphy  
James A. Lassart  
Thomas P Mazzucco  
Joseph Leveroni  
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[jlassart@mpbf.com](mailto:jlassart@mpbf.com)  
[TMazzucco@MPBF.com](mailto:TMazzucco@MPBF.com)  
[JLeveroni@MPBF.com](mailto:JLeveroni@MPBF.com)

*Attorney for Birnbaum & Godkin, LLP*

APPENDIX A TO FACEBOOK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO OPEN DISCOVERY AND TO COMPEL / CASE NO. CIV 533328

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on January 9, 2019, at San Francisco, California.  
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Christina Ortega

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APPENDIX A TO FACEBOOK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF ITS MOTION TO OPEN DISCOVERY AND TO COMPEL / CASE NO. CIV 533328

# **EXHIBIT 3**

1 Jack Russo (Cal. Bar No. 96068)  
2 Christopher Sargent (Cal. Bar No. 246285)  
3 COMPUTERLAW GROUP LLP  
4 401 Florence Street  
5 Palo Alto, CA 94301  
6 (650) 327-9800 office  
7 (650) 618-1863 fax  
8 jrusso@computerlaw.com  
9 csargent@computerlaw.com

10  
11 Attorneys for Third Parties  
12 THEODORE KRAMER and  
13 THOMAS SCARAMELLINO  
14

15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SAN MATEO

17  
18 **Six4Three, LLC, a Delaware limited liability**  
19 **company,**

20 Plaintiff;

21 v.

22 **Facebook, Inc., a Delaware corporation;**  
23 **Mark Zuckerberg, an individual;**  
24 **Christopher Cox, an individual; Javier**  
25 **Olivan, an individual; Samuel Lessin, an**  
26 **individual; Michael Vernal, an individual;**  
27 **Ilya Sukhar, an individual; and Does 1–50,**  
28 **inclusive,**

29 Defendants.

30 Case No. CIV533328

31 Assigned for all purposes to Hon. V.  
32 Raymond Swope, Dep't 23

33 **DECLARATION OF THOMAS SCARAMELLINO**  
34 **IN COMPLIANCE WITH AMENDED CASE**  
35 **MANAGEMENT ORDER NO. 19**

1 I, Thomas Scaramellino, declare as follows:

2 1. My name is Thomas Scaramellino, I am over the age of 18. I make the following  
3 statements in compliance with the Court's March 13, 2019 Order that I submit a Declaration  
4 pursuant to Amended Case Management Order no. 19.

5 2. Until my relationship with Birnbaum & Godkin, LLP ended in early December  
6 2018, I assisted in the present litigation as a law clerk of the legal team for Plaintiff Six4Three,  
7 LLC, supervised by David Godkin. Because I was not employed full-time by Birnbaum &  
8 Godkin, I was required by Mr. Godkin to execute the Protective Order certification before I was  
9 given access to Facebook's confidential information. A true and correct copy of this executed  
10 certification is attached as **Exhibit 1**. At the time I executed this certification, it was understood  
11 that I would only be provided access to Facebook's confidential information; I therefore struck  
12 out the words "Highly Confidential Information" on the certification. As the litigation progressed  
13 and my assistance was requested in drafting pleadings which involved Facebook's highly  
14 confidential information, and after obtaining the Court's permission regarding my involvement  
15 as a law clerk in response to a motion filed by Facebook attempting to sever me from the legal  
16 team, I was permitted access to Facebook's highly confidential information as well. At all times I  
17 understood that strict compliance with the Protective Order was required.

18 3. At no time from my execution of the attached certification on December 1, 2016  
19 have I provided information subject to the Protective Order to any unauthorized individuals or  
20 outside the scope of Mr. Godkin's supervision or without Mr. Godkin's knowledge.

21 4. Pursuant to the Court's December 14, 2018 Order, on December 19, 2018, in the  
22 presence of counsel for Facebook and Facebook's forensics firm, I took all steps necessary to  
23 delete, destroy, or return to Facebook all confidential and highly confidential information  
24 produced by Facebook under the Protective Order, and I executed a Certification of Destruction  
25 to the Court. A true and correct copy of this certification is attached as **Exhibit 2**.

26 5. In the Summer of 2017, Mr. Godkin directed the legal team to analyze the  
27 privilege logs served by Facebook on Birnbaum & Godkin, which were served in an  
28 unsearchable PDF format and contained more than 14,000 entries. In order to analyze the

1 privilege logs, it became necessary to convert the file to a readable and searchable Microsoft  
2 Excel format, because Facebook refused to provide the file in native Excel format. Once  
3 converted, it further became necessary to write software code that would enable us to automate  
4 the process of reviewing such a large file with over 14,000 entries. To accomplish this task, Mr.  
5 Godkin authorized me to obtain the aid of Mr. Brent Frissora, who has significant experience in  
6 analyzing large data sets, coding macros and programs that can analyze data in Microsoft Excel,  
7 and various related tasks. Despite the limited scope of Mr. Frissora's involvement in the present  
8 litigation, he was required to execute a Protective Order certification before he began his work as  
9 an extra precaution, which he did on August 4, 2017. A true and correct copy of Mr. Frissora's  
10 executed certification is attached as **Exhibit 3**. Mr. Frissora never received any of the content or  
11 the documents identified in those logs.

12       6.      Mr. Frissora's expertise proved valuable to advancing 643's interests in the case  
13 as his program was able to identify a wide range of deficiencies in Facebook's privilege log,  
14 including that more than half of the 14,000 entries did not include any communication to or from  
15 any attorney. Mr. Frissora's program was further able to detect that Facebook made material  
16 undisclosed changes across three iterations of its privilege logs, deleting documents from the  
17 logs that had not been produced in this litigation. These serious deficiencies (and numerous  
18 others) regarding Facebook's privilege logs were brought to the Court's attention in letters during  
19 the Fall of 2017. To date, the Court has not ruled on this request by Six4Three.

20       7.      As confirmed by Mr. Frissora, he has deleted and destroyed Facebook's privilege  
21 logs and his work product related to this litigation.

22       8.      I have had no communication with the other experts mentioned in David Godkin's  
23 Declaration of March 5, 2019 since at least early December 2018 and do not have personal  
24 knowledge of and therefore cannot testify as to their subsequent destruction or return of this  
25 information.

26  
27  
28

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this declaration was entered into on March 14, 2019 in  
3 Rumson, New Jersey.

4 \_\_\_\_\_  
5 Thomas Scaramellino  
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# **EXHIBIT 1**

## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 (“Order”). I have been given a copy of that Order and read it.

7 I agree to be bound by the Order and I understand and acknowledge that failure to so  
8 comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal  
9 the Confidential Information or Highly Confidential Information to anyone, except as allowed by  
10 the Order. I will maintain all such Confidential Information or Highly Confidential Information,  
11 including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent  
12 unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will  
13 return the Confidential Information or Highly Confidential Information, including copies, notes,  
14 or other transcriptions made therefrom, to the counsel who provided me with the Confidential  
15 Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San  
16 Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement  
17 proceedings occur after termination of this action.

18 I hereby appoint Basil P. Fthenakis located at the address of  
19 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

I declare under penalty of perjury that the foregoing is true and correct and that this  
certificate is executed this 1st day of December, 2016, at 9:00AM

By: \_\_\_\_\_

Address: 51 Melcher Street, 7th Floor

Boston, MA 02210

Phone: (617) 532 - 0992

# **EXHIBIT 2**

Electronically  
**FILED**

by Superior Court of California, County of San Mateo  
ON 12/21/2018

By /s/ Gerardo B. Tolentino  
Deputy Clerk

1 Jack Russo (Cal. Bar No. 96068)  
2 Christopher Sargent (Cal. Bar No. 246285)  
COMPUTERLAW GROUP LLP  
3 401 Florence Street  
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6 Attorneys for Third Parties  
THEODORE KRAMER and  
7 THOMAS SCARAMELLINO

8 SUPERIOR COURT OF CALIFORNIA  
9

10 COUNTY OF SAN MATEO

11 **Six4Three**, a Delaware limited liability  
12 company,

13 Plaintiff;

14 v.

15 **Facebook, Inc.**, a Delaware corporation;  
Mark Zuckerberg, an individual;  
Christopher Cox, an individual; Javier  
Olivan, an individual; Samuel Lessin, an  
individual; Michael Vernal, an individual;  
Ilya Sukhar, an individual; and **Does 1–50**,  
18 inclusive,

19 Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V.  
Raymond Swope, Dep't 23

**THOMAS SCARAMELLINO'S CERTIFICATION  
OF DESTRUCTION**

1 I, Thomas Scaramellino, declare under penalty of perjury as follows.

2 1. My name is Thomas Scaramellino. I am over the age of 18. I have personal  
3 knowledge of the matters stated in this declaration, except where stated on information and  
4 belief, and I believe those matters to be true.

5 2. I read and reviewed the Court's December 14, 2018 Order.

6 3. Pursuant to that December 14, 2018 Order, and as I understand its modification on  
7 the record on December 17, 2018, I hereby make the following certification.

8 4. On December 19, 2018 starting at approximately 9:00 a.m. and continuing until  
9 completion, at the offices of Murphy Pearson Bradley & Feeney at 88 Kearny St., 10th Floor,  
10 San Francisco, CA 94108, and in the presence of David Godkin and his personal counsel, Stuart  
11 Gross and his personal counsel, my personal counsel, a representative from Stroz Friedberg, and  
12 counsel for Facebook, for each account or device described in Appendix A attached hereto where  
13 I am listed as the custodian:

14 (a) I took all steps necessary to delete, destroy, or return to Defendant all  
15 Documents<sup>1</sup> produced by Defendant and designated Confidential or  
16 Highly Confidential under the Stipulated Protective Order entered in this  
17 matter on October 25, 2016 in my possession, custody or control;

19  
20 <sup>1</sup> By "Document" and "Documents," I mean any written, printed, typed, recorded, magnetic,  
21 digitized, punched, copied, graphic or other tangible thing in, through, or from which  
22 information may be embodied, translated, conveyed, or stored including letters, correspondence,  
23 memoranda, notes, records, minutes, studies, reports, ledgers, books, notebooks, pamphlets,  
24 announcements, publications, advertisements, sales literature, brochures, manuals, price lists,  
25 messages, papers, legal instruments, agreements, telegrams, telexes, electronic mail, electronic  
26 attachments, dictation tapes, audio tapes, video tapes, film, computer files, computer tapes  
27 (including backup tapes), computer discs (including backup discs), computer printouts,  
28 microfilm, microfiche, worksheets, diaries, calendars, photographs, prints, pictures, charts,  
drawings, sketches, graphs, and all of the writings or drafts thereof as defined in California  
Evidence Code section 250, as well as data stored in a computer, computer networks, hard-  
drives, USB drives, CDs, DVDs, data stored on removable magnetic or optical media (e.g.,  
magnetic tape, floppy discs and recordable optical disks), data used for electronic data  
interchange, audit trails, digitized pictures and video (e.g., data stored in MPEG, JPEG and GIF  
formats), and digitized audio and voicemail. A draft or non-identical copy is a separate  
document within the meaning of this term.

- (b) I took all steps necessary to delete, destroy, or return to Defendant all Documents (a) containing any information copied or extracted from or reflecting the Confidential Information or Highly Confidential Information; (b) comprising copies, excerpts, summaries, or compilations of Confidential Information or Highly Confidential Information; and (c) containing any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential Information or Highly Confidential Information; and,
- (c) All Documents encompassed within (a) or (b), *supra*, have been deleted, destroyed, or returned to Defendant.

5. I further certify that, other than the devices and accounts listed in Appendix A, I do not have any other accounts or devices that contain any documents that contain any Facebook Confidential or Highly Confidential Information in my possession custody or control.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was entered into on December 19, 2018 in San Francisco, California.

Thomas Scaramellino

# APPENDIX A

Custodian	Evidence Type	Description	Username	
Theodore Kramer	Cloud Storage Account	Dropbox	<u>theodore.kramer@gmail.com</u>	
Thomas Scaramellino	Cloud Storage Account	Dropbox	t[REDACTED]@tallygo.com	
Thomas Scaramellino	Cloud Storage Account	Dropbox	t[REDACTED]@six4three.com	Transferred deleted account's files to new account.
Thomas Scaramellino	Cloud Storage Account	Dropbox	<u>thomas.scaramellino@gmail.com</u>	
Theodore Kramer	Cloud Storage Account	Google	<u>theodore.kramer@gmail.com</u>	Preservation as noted in e-mail dated 12/13/2018
Theodore Kramer	Cloud Storage Account	Google	[REDACTED]@six4three.com	
Thomas Scaramellino	Cloud Storage Account	Google	t[REDACTED]@tallygo.com	Preservation as noted in e-mail dated 12/08/2018
Thomas Scaramellino	Cloud Storage Account	Google	<u>thomas.scaramellino@gmail.com</u>	Preservation as noted in e-mail dated 12/13/2018
Theodore Kramer	Cloud Storage Account	iCloud	<u>theodore.kramer@gmail.com</u>	

Theodore Kramer	Cloud Storage Account	Proton Mail	t [REDACTED] @protonmail.com	Preservation as noted in e-mail dated 12/13/2018
Thomas Scaramellino	Cloud Storage Account	Proton Mail	t [REDACTED] @protonmail.com	Preservation as noted in e-mail dated 12/08/2018
Gross & Klein	Cloud Storage Folder	Box		
Theodore Kramer	Device	(4) USB Devices		
Thomas Scaramellino	Device	External Hard Drive		
Thomas Scaramellino	Device	iPhone (Personal)		
Theodore Kramer	Device	iPhone 8 (Personal)		
Theodore Kramer	Device	iPhone SE (International burner)		
Thomas Scaramellino	Device	Mac Mini		
Theodore Kramer	Device	MacBook		
Thomas Scaramellino	Device	MacBook		

# **EXHIBIT 3**

## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis located at the address of  
2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in  
connection with this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

I declare under penalty of perjury that the foregoing is true and correct and that this  
certificate is executed this 4 day of August, 2016, at 16:11 EST

By: Print Text

Address: 100 W 58TH ST, 2B  
NEW YORK, NY 10019

Phone: 646-460-2658

# **EXHIBIT 4**

**FILED  
SAN MATEO COUNTY**

FEB. 28 2019

Clerk of the Superior Court

By: *[Signature]*

3  
1 James A. Murphy - 062223  
2 JMURPHY@mpbf.com  
James A. Lassart - 40913  
2 JLassart@mpbf.com  
3 Joseph S. Leveroni - 304721  
JLeveroni@mpbf.com  
4 MURPHY, PEARSON, BRADLEY & FEENEY  
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5 San Francisco, CA 94108-5530  
Telephone: (415) 788-1900  
6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel  
8 David S. Godkin (admitted *pro hac vice*)  
James E. Kruzer (admitted *pro hac vice*)  
9 Birnbaum & Godkin, LLP  
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10 Telephone: (617) 307-6100  
Facsimile: (617) 307-6101  
11 godkin@birnbaumgodkin.com  
kruzer@birnbaumgodkin.com

13 SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited  
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware  
corporation;  
19 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
21 JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
DOES 1 through 50, inclusive,

22 Defendants.

Case No. CIV 533328

Assigned For All Purposes To  
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN  
SUPPORT OF RESPONSE OF DAVID S.  
GODKIN, JAMES E. KRUZER AND  
BIRNBAUM & GODKIN, LLP TO  
DEFENDANT'S EX PARTE APPLICATION  
FOR AN ORDER ENFORCING THE  
STIPULATED PROTECTIVE ORDER**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

CIV533328

DIR

Declaration in Reply

1678777



1 I, David S. Godkin, declare:

2       1. I am a partner at the law firm of Birnbaum & Godkin, LLP ("B&G"), counsel of record  
3 for Plaintiff Six4Three, LLC ("643") in this case. I make this Declaration from personal knowledge,  
4 and if called to testify, I could and would competently testify thereto.

5       2. My firm retained two expert consultants to assist us with the litigation. One was Paul  
6 Dehaye, who is a well-known expert in digital privacy issues and qualified to provide expert opinions  
7 and analysis of such issues. Mr. Dehaye's assistance was required to rebut Facebook's arguments that  
8 its actions that forced 643 out of business were undertaken in the interests of protecting the privacy  
9 interests of Facebook's users. Mr. Dehaye executed the Certification required by this Court's  
10 Protective Order before he was provided with any of Facebook's confidential or highly confidential  
11 documents. By executing the Certification, Mr. Dehaye certified his understanding that Facebook's  
12 confidential and highly confidential information was provided to him pursuant to the terms and  
13 restrictions of the Protective Order. He certified that he had been given a copy of the Protective Order  
14 and that he had read it. He agreed to be bound by the Protective Order and certified that he understood  
15 and acknowledged that a failure to comply could expose him to sanctions and punishment in the nature  
16 of contempt. He agreed not to reveal Facebook's confidential or highly confidential information to  
17 anyone, except as allowed by the Protective Order. He agreed to maintain all such information in a  
18 secure manner to prevent unauthorized access to it.

19       3. In early January 2019, I informed Mr. Dehaye that my firm was not able to continue to  
20 represent 643 and that 643 was in the process of seeking to engage new counsel. I informed him that  
21 because my firm was withdrawing as counsel, my firm was terminating its engagement with him  
22 pursuant to our engagement letter with him. I also informed him that he would continue to be bound  
23 by the Protective Order. Finally, I directed Mr. Dehaye to return or destroy all Facebook confidential  
24 information that he had in his possession, including all documents referring to Facebook's confidential  
25 documents, and to confirm that he had done so. In response, on January 11, 2019, Mr. Dehaye  
26 confirmed that he had deleted all of Facebook's documents.

4. My firm also retained a consultant to review Facebook's highly confidential documents to assist us in identifying potential deposition and trial witnesses. This consultant also signed the Protective Order Certification before we provided her with any Facebook documents. As with Mr. Dehaye, I terminated my firm's engagement with the consultant in early January 2019, and the consultant confirmed that all Facebook documents were returned to my firm or destroyed.

6        5.        As set forth above, B&G only provided third parties with Facebook's confidential or  
7 highly confidential information in conformance with the Protective Order. At no time did B&G direct,  
8 authorize, condone, or otherwise sanction the release, disclosure, or commentary by experts and  
9 consultants of any confidential or highly confidential information to any third party, nor is it aware of  
10 any such activity.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 28, 2019 at Boston, Massachusetts.

David S. Godkin  
David S. Godkin

# **EXHIBIT 5**

CIV533328  
CMO  
Case Management Order  
1678812



FILED  
SAN MATEO COUNTY

MAR 01 2019

By Clerk of the Superior Court  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

**CASE MANAGEMENT ORDER NO. 19**

Assigned for All Purposes to  
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On February 27, 2019, the Court set a briefing schedule on Defendant FACEBOOK, INC.'s ("Facebook") Ex Parte Application for an Order Enforcing the Stipulated Protective Order ("Facebook's Ex Parte" or "Ex Parte").

Having considered Facebook's Ex Parte, filed on February 27, 2018, and the respective responses of: (1) David S. Godkin, James Kruzer, and Birnbaum & Godkin, LLP ("Godkin Response"); (2) Gross & Klein, LLP and Stuart G. Gross ("Gross Response"); and (3) Theodore Kramer and Thomas Scaramellino (Kramer Response") and good cause appears.

IT IS HEREBY ORDERED as follows:

1. Facebook's Ex Parte is GRANTED, IN PART, AND DENIED, IN PART. As a threshold matter, the Court finds the Application is not a request for reconsideration. (See Kramer Response, p. 3:11-21.) The Ex Parte involves new disclosures of confidential or highly confidential information ("confidential information") subject to the Stipulated Protective Order, issued on October 25, 2016, published on the Internet outside of publication by the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS"). (Abrahamson Dec. ISO Ex Parte, Ex.

1 4, 5. See Ex Parte, p. 1:8-14.)

2       2. Pursuant to Paragraph 4 of the Stipulated Protective Order,<sup>1</sup> Plaintiff SIX4THREE,  
3 LLC ("Six4Three"), through its counsel of record, shall produce fully executed Certifications of all  
4 consultants or expert witnesses (Paragraph 4(e)), whether eventually retained or not, and all  
5 witnesses (Paragraph 4(g)) **no later than March 5, 2019 at 5:00 p.m.** This shall include the persons  
6 identified by Six4Three, including but not limited to, Thomas E. Scaramellino, who has repeatedly  
7 stated his role as a law clerk was not as an employee of Birnbaum & Godkin, LLP, Paul Dehaye  
8 (Godkin Dec. ISO Godkin Response, ¶ 2 ("Godkin Dec."), and an unidentified retained consultant  
9 (*id.* at ¶ 4)).

10     3. Mr. Godkin has referred to his communications with Mr. Dehaye and an unidentified  
11 retained consultant and their actions pertaining to the Stipulated Protective Order and confidential  
12 information. (Godkin Dec., ¶¶ 2 – 4.) Accordingly, Six4Three shall serve, **no later than March 5,**  
13 **2019 at 5:00 p.m.**, the verified declarations of Mr. Dehaye and the unidentified retained consultant  
14 where they shall state and address: (1) the date of receipt of a copy of the Stipulated Protective Order  
15 and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3)  
16 the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order  
17 by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled  
18 to receive such information "pursuant to Paragraph 6 (see Godkin Dec., ¶ 5); (5) the date of  
19 destruction of confidential information in their custody or control; and (6) the date of confirmation  
20 of destruction of confidential information to Mr. Godkin (see *id.* at ¶¶ 3 , 4).

21     4. Mr. Godkin states that his firm "only provided third parties with Facebook's  
22 confidential or highly confidential information in conformance with the Protective Order." (Godkin  
23 Dec., p. 3:6-7.) The Court finds this statement ambiguous. Mr. Godkin shall serve a declaration  
24 clarifying his or any person's, whether employed, consulted, retained, volunteered, affiliated or  
25 associated with Birnbaum & Godkin, LLP, compliance with Paragraph 6 by "not reveal[ing] or  
26 discuss[ing] confidential information to or with any person who is not entitled to receive such

27  
28 <sup>1</sup> All further citations to "Paragraph" refer to the paragraphs of the Stipulated Protective Order.

1 information" no later than March 5, 2019 at 5:00 p.m.

2       5.      The Court finds that the recent publication of confidential information made outside  
3 of DCMS publication outweighs Mr. Kramer's privacy interests. Further inquiry into what  
4 confidential information Mr. Kramer shared with the DCMS compared to what has been published  
5 outside of the DCMS is necessary to preserve the sanctity of the Stipulated Protective Order.

6       Accordingly, Stroz Friedberg, LLC, ("Stroz Friedberg") shall conduct a search on Mr.  
7 Kramer's computer, currently in its possession, for any and all logs and records, not limited to  
8 systems logs, that will identify any files accessed, opened, uploaded, downloaded, transferred,  
9 shared, saved, modified, and/or deleted, for the period from November 19, 2108 at 12:00:00 A.M.  
10 (GMT) to November 23, 2018 at 11:59:59 P.M (EST). **Stroz Friedberg shall not open any files**  
11 **on Mr. Kramer's computer absent further of the Court.**

12       This search is narrowly tailored to the dates from when Mr. Kramer traveled to London and  
13 was in communication with DCMS to the date of his stated deletion of confidential information in  
14 New York. (See Kramer Dec ISO Six4Three Brief, filed Nov. 26, 2018, ¶¶ 11 – 24.) The Court  
15 acknowledges Mr. Kramer's objection to Stroz Friedberg because of their retention by Facebook.  
16 However, Kramer has failed to demonstrate that Stroz Friedberg has not complied with the Court's  
17 prior orders.

18       Time is of the essence, given the continuing disclosure of confidential information outside  
19 of DCMS publication. Moreover, as previously represented, Six4Three is bereft of funds to retain  
20 a joint forensic examiner for the purposes of this inquiry. Thus, any forensic examiner would solely  
21 be funded by Facebook.

22       Stroz Friedberg shall serve on counsel of record a written summary and attach the logs and  
23 records promptly upon completion. The Court considers this report confidential information under  
24 the protective order and should be treated as such.

25       ///

26       ///

27       ///

28       ///

1       6. Facebook's Motion to Open Discovery shall remain on March 15, 2018 at 10:00  
2 a.m.

3       7. The Court, *sua sponte*, continues the Case Management Conference from March 7,  
4 2019 to March 15, 2019 at 10:00 a.m.

5  
6 IT IS SO ORDERED.  
7

8 DATED: March 1, 2019  
9  
10  
11



Honorable V. Raymond Swope  
Judge of the Superior Court

12  
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# **EXHIBIT 6**

1 James A. Murphy – 062223  
2 JMURPHY@mpbf.com  
3 James A. Lassart – 40913  
4 JLassart@mpbf.com  
5 Joseph S. Leveroni – 304721  
6 JLeveroni@mpbf.com  
7 MURPHY, PEARSON, BRADLEY & FEENEY  
8 88 Kearny Street, 10<sup>th</sup> Floor  
9 San Francisco, CA 94108-5530  
10 Telephone: (415) 788-1900  
11 Facsimile: (415) 393-8087

12  
13 Attorneys for Plaintiff's Counsel  
14 David S. Godkin (admitted *pro hac vice*)  
15 James E. Kruzer (admitted *pro hac vice*)  
16 Birnbaum & Godkin, LLP  
17 280 Summer Street  
18 Boston, MA 02210  
19 Telephone: (617) 307-6100  
20 Facsimile: (617) 307-6101  
21 godkin@birnbaumgodkin.com  
22 kruzer@birnbaumgodkin.com

23  
24 SUPERIOR COURT OF CALIFORNIA  
25  
26 COUNTY OF SAN MATEO

27 SIX4THREE, LLC, a Delaware limited  
28 liability company;

1 Plaintiff,

2 v.

3 FACEBOOK, INC., a Delaware  
4 corporation;  
5 MARK ZUCKERBERG, an individual;  
6 CHRISTOPHER COX, an individual;  
7 JAVIER OLIVAN, an individual;  
8 SAMUEL LESSIN, an individual;  
9 MICHAEL VERNAL, an individual;  
10 ILYA SUKHAR, an individual; and  
11 DOES 1 through 50, inclusive,

12 Defendants.

13 Case No. CIV 533328

14 Assigned For All Purposes To  
15 Hon. V. Raymond Swope, Department 23

16 DECLARATION OF Redacted

17 Redacted

18 REDACTED FOR PUBLIC FILING

19 Hearing: 5/13/19  
20 Time 10:00 am  
21 Department: 23  
22 Judge: Honorable V. Raymond Swope  
23 Filing Date: April 10, 2015  
24 Trial Date: April 25, 2019

25 CIV533328  
26 DECL  
27 Declaration  
28 1727606



1 I, Redacted [REDACTED], declare:

2       1. I am over the age of 18. I make the following statements in response to Case Management  
3 Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to testify, I could and  
4 would competently testify thereto.

5       2. I received a copy of the Stipulated Protective Order and blank certification in this action  
6 on May 10, 2018.

7       3. I executed the certification on May 14, 2018.

8       4. As detailed below, I have deleted most documents. I understand from the Plaintiff's that  
9 they sent me Facebook's confidential and highly confidential information on May 14, 2018, May 16,  
10 2018, June 6, 2018, and June 27, 2018. I take this information from the draft declaration prepared by Mr  
11 Godkin.

12      5. As used herein, "Facebook's confidential or highly confidential information" includes all  
13 information copied or extracted from or reflecting the confidential or highly confidential information,  
14 all copies, excerpts, summaries or compilations of confidential or highly confidential information, and  
15 any testimony, conversations or presentations by parties or their counsel that might reveal confidential  
16 or highly confidential information. I stored and maintained Facebook's confidential and highly  
17 confidential information in a secure location to which only I had access.

18      6. I destroyed all Facebook confidential and highly confidential information in my custody  
19 or control between January 4, 2019 and January 11, 2019.

20      7. Case Management Order 19 requires me to confirm my "compliance with the Stipulated  
21 Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who  
22 is not entitled to receive such information"." I have sought to make my position on this matter clear in  
23 recent correspondence with the parties to these proceedings and the court. I exhibit a copy of that entire  
24 chain of correspondence.

25      8. Given the widespread public scrutiny of this case and the potential criminality of  
26 breaching the Protective Order I want to be clear as to what I did and did not do, rather than asserting  
27 that I have complied without a deeper examination of my involvement in the case. It is a difficult,  
28

1 complex and costly task to establish the extent of my compliance. I consider that such an undertaking  
2 would be unfair and prejudicial to me, for the reasons detailed in my correspondence. In summary:

- 3     a. **Firstly**, there is no evidence that I have not complied with the order. At its highest, the  
4         evidence is based on the actions of third parties and an email in which I said I was able  
5         to join a call. My records confirm that I did not join that call and I cannot be held liable  
6         for what others say about me. There is simply no evidence that I have breached the  
7         Protective Order, or even that I intended to do so.
- 8     b. **Secondly**, I am still not clear why Facebook consider that I have not complied with the  
9         order. The *ex parte* application by Facebook was misleading and inaccurate. There was  
10         no need for an application to be made on this basis. The correspondence I have had with  
11         Facebook since only serves to confirm that there is in fact no evidence to suggest that I  
12         have breached the terms of the order yet I find myself having to undertake considerable  
13         effort at considerable cost to comply with an order that was procured on a material  
14         misrepresentation.
- 15     c. **Thirdly**, throughout my involvement in this matter, as an independent expert retained by  
16         the Plaintiffs, I have followed the instructions and advice of those that retained me. I  
17         always operated under the assumption that the parties would act with respect to the  
18         Protective Order. I did not therefore give a detailed analysis to the terms of the Protective  
19         Order, as I had no reason to believe that the terms would be breached. I now realize that  
20         the terms of the Protective Order are complex and require detailed analysis. In order for  
21         me to fully explain what I have or have not done, I will need further legal advice and a  
22         deep consideration of all documents and communications. For reasons detailed below,  
23         this may not be entirely possible. However, whatever I do will be very costly to me and  
24         time consuming. Given this prejudice, I do not think it is fair for me to have to go through  
25         such an undertaking. For reasons dealt with below, I also think that such an undertaking  
26         would not be necessary.

1           d. ***Fourthly***, I no longer have the relevant information to be able to provide a complete  
2 picture, as I have destroyed the material. As I confirmed to Mr. Godkin and as per his  
3 request, I destroyed Facebook's confidential and highly confidential information by  
4 January 11, 2019. I no longer have access to that Facebook confidential or highly  
5 confidential information. This makes a historical analysis of compliance very difficult,  
6 leaving aside whether I even have all the correspondence.

7           9. For the avoidance of doubt and to assist the court, I want to make it clear that the issues  
8 in concern in Facebook's *ex parte* application had nothing to do with me. I was not a party to the events  
9 that led to the DCMS Committee's receipt of Facebook's confidential and highly confidential  
10 information. Whilst I have given evidence to the DCMS Committee on matters to which I have expertise,  
11 I was simply not involved with the passing of information from the Plaintiffs – or anyone else – to the  
12 DCMS Committee. There is no evidence that I was so involved and I would not have involved myself  
13 in this breach of the Protective Order.

14           10. Furthermore, there was an accusation that because a third party, a Redacted [REDACTED], had  
15 tagged me in a Twitter post, I had somehow been involved with him receiving and disseminating  
16 Facebook's confidential or highly confidential information. I understand this accusation has now been  
17 conceded by Facebook as being without merit. However, for clarity and for the court record, I confirm  
18 that I had no involvement with Redacted [REDACTED] and do not know why he tagged me on Twitter. I can only  
19 presume he did so because of my general expertise but cannot say for certain. In any event, I did not  
20 provide any information to him at all, have not discussed the documents with him and I cannot be held  
21 responsible for the actions of a third party.

22           11. As the purpose of the *ex parte* application and Case Management Order No. 19 is fulfilled,  
23 as far as these issues are in my knowledge and control, by paragraphs 9 and 10 of this declaration, I  
24 cannot see the necessity for any further declaration from me.

25           12. I also feel like this whole process has been deeply unfair to me. I received no independent  
26 legal advice on the terms of the Protective Order at the outset, which I now realize was a mistake. There  
27 is however no evidence that I have breached the Protective Order. Nevertheless, I was been subject to  
28

an *ex parte* application by Facebook, which was both unnecessarily *ex parte* and misleading. I have thereafter incurred costs trying to explain my position. I have incurred further costs since. This has all come from my own funds.

13. If I were forced to provide a full explanation of my compliance with the Protective Order, this would incur considerable costs, time and resources. Given the lack of evidence of any breach of the Protective Order, the misleading nature of the accusations against me in Facebook's *ex parte* application and that I can positively say that I was not involved with the breaches of concern, such a further declaration would seem unfair and unnecessary. I would instead hope that the Honorable Judge Swope and the Court would rather give deference to the problems I have faced and release me from any further action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 20, 2019

**Redacted**

Redacted

# **EXHIBIT**



**Sonal N. Mehta**  
Durie Tangri

19-21 Great Tower Street  
Tower Hill  
London, EC3R 5AQ

Stratford Office:  
City View House  
1 Dorset Place  
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[www.itnsolicitors.com](http://www.itnsolicitors.com)

By email: [smehta@durietangri.com](mailto:smehta@durietangri.com)

05 March 2019

Our ref: RAN/32411

Dear Ms Mehta

Redacted [REDACTED]

We have been instructed to represent the above named.

Our client has received correspondence from David Godkin of Birnbaum & Godkin, LLP relating to *Six4Three v Facebook Inc. et al.*

On 1 March 2019, Mr Godkin provided Redacted [REDACTED] with an order from the Superior Court of California explaining that our client was required to provide a declaration to the court by 17:00 Eastern Time on 5 March 2019. Mr Godkin did not provide the background documents to that order until 20:00 GMT on 4 March 2019, after a request for those documents from this firm.

Having considered those documents, we are instructed to write to you to provide some clarity to our client's role in the *Six4Three* litigation as there appears to be a misunderstanding of his role and his retainer. You will appreciate that our client has been cut out from the process to date, which has prejudiced his ability to explain his role and the basis for his limited involvement in the case.

## 1. Our client's background

Redacted [REDACTED] is a well-known privacy and data rights activist. He is renowned for his insight into the European data protection regime, as well as his capacity to convey such subjects to a wider audience.

He has been regularly sought for commentary and insight in the media in this role. Redacted [REDACTED]

[REDACTED]. We enclose examples of that commentary for your client's consideration, which demonstrate Redacted [REDACTED] unique ability to humanise complex technical issues and to explain the importance of the data protection regime as a matter of wider public interest.

## 2. Our client's role with Six4Three

In the context of that expertise, our client was approached by Mr Godkin to act as an expert on public interest elements of the Six4Three litigation. Redacted [REDACTED] was provided with a letter of engagement on 14 May 2018. We enclose a copy of that engagement letter.

You will see that the terms of the retainer were not well drafted but that Redacted [REDACTED] was retained by Birnbaum & Godkin, LLP to "assist [them] in reviewing Facebook's arguments related to digital privacy issues." This is what our client understood his role to be and acted at the instruction of Birnbaum & Godkin, LLP and their clients in this litigation. Redacted [REDACTED] has not been paid for these services.

To be clear, Redacted [REDACTED] is not a lawyer and was therefore reliant on Birnbaum & Godkin, LLP to understand the US process and the terms of the Protective Order.

### 3. Execution of the Protective Order

[Redacted] was provided with the Protective Order by Birnbaum & Godkin, LLP on 10 May 2018. The certificate was executed on 14 May 2018. We enclose the certified version.

Klein & Gross LLP were appointed as [Redacted] agent for service of process, on the recommendation of Birnbaum & Godkin, LLP. [Redacted] was not provided with any independent legal advice on the terms of the order at the time it was provided to him nor when it was executed.

### 4. Current status of documents

On 4 January 2019, Mr Godkin requested [Redacted] to destroy all confidential and highly confidential documents. Mr Godkin requested [Redacted] to do so, as Birnbaum & Godkin, LLP were no longer able to act for the Plaintiff.

[Redacted] destroyed all Facebook confidential and highly confidential information in his custody or control between 4 January 2019 and 11 January 2019.

[Redacted] maintained a contemporaneous record of the documents he had received, as and when he received them. Accordingly, he is able to confirm that he has deleted all the documents he had received marked "Confidential" or "Highly Confidential" under the Protective Order. These are the documents listed an Annex 1. He also received internal case summaries prepared by the Plaintiffs and has permanently deleted those documents as well.

### 5. Further matters

Our client is concerned by the nature of the allegations levied at him. Being kept from these proceedings has prejudiced his position by preventing him from being able to explain his limited role. For instance, page 7 line 8 of Facebook's *ex parte* application of 25 February 2019 suggests that [Redacted] agreed to "confirm details of the confidential

information" to reporters "anonymously." Redacted [ ] denies having said the same and has not been provided with the document referred to. He is unaware of any such email and should it exist, please provide it to Redacted [ ] through this firm.

We trust that the information provided with this letter and enclosures clarifies the position for Facebook and quells any further concerns your client may have. We should be grateful if you could provide a copy of this letter to the court and the Honorable Judge V. Raymond Swope accordingly.

Should you have any queries in respect of this matter please contact Mr Ravi Naik of our offices.

Yours faithfully

**Irvine Thanvi Natas Solicitors**

cc. David Godkin, Birnbaum & Godkin, LLP

## **Annex 1: Documents deleted**

- Redacted



David S. Godkin  
Direct Dial: (617) 307-6110  
godkin@birnbaumgodkin.com

May 14, 2018

BY EMAIL ONLY [Redacted] )

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

*Re: Six4Three, LLC v. Facebook, Inc., Civ. 533328*

Dear [Redacted]

I am writing to confirm that Birnbaum & Godkin, LLP, as counsel for Six4Three, LLC, is engaging you as an expert consultant in the above-referenced matter to assist us in reviewing Facebook's arguments related to digital privacy issues. The initial phase of this engagement will involve your review of a brief and declaration that we have prepared in opposition to a motion to strike filed by Facebook, both of which include citations to various documents produced by Facebook in the above litigation. In addition, we will provide you with such of the Facebook documents that you request. You have agreed that you will not charge for this phase of the engagement. We will discuss compensation for later phases of the engagement, including possible testimony, and related compensation for your time, at a later date.

You agree that you will maintain in the strictest of confidence all aspects of this engagement including, but not limited to, all materials reviewed, generated or received by you or sent by you to this firm or our client. You will refrain from speaking with anyone about this matter and you will treat all communications with my client and my firm as privileged. Finally, you agree that any materials provided to you and any report that you prepare at our request shall be the property of the attorneys who have retained you and will not be used or disclosed without our consent.

I understand that you have already reviewed the Protective Order entered by the Court on October 24, 2016 and that you will sign the certification to same before we provide you with any documents. The brief and declaration that we will provide to you reference information that has been designated by Facebook as Confidential or Highly Confidential and are subject to the Protective Order. The Facebook documents that you request have also been designated by Facebook as Confidential or Highly Confidential and are subject to the Protective Order.

If this letter accurately describes our agreement, please sign the letter in the space provided and return it to me.

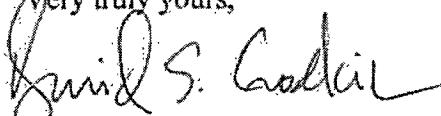


Redacted

May 14, 2018

Page Two

I look forward to working with you.

Very truly yours,  
  
David S. Godkin

DSG/cam

**AGREED AND ACCEPTED:**

**Redacted**

Redacted

Date:

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

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9 Attorneys for Defendant  
Facebook, Inc.

FILED  
SAN MATEO COUNTY

OCT 25 2016

By *[Signature]*  
DEPUTY CLERK

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN MATEO

14 SIX4THREE, LLC, a Delaware limited  
15 liability company,

16 Plaintiff,

17 v.  
18 FACEBOOK, INC., a Delaware  
corporation and DOES 1-50, inclusive,

19 Defendant.

Case No. CIV533328

STIPULATED [PROPOSED]  
PROTECTIVE ORDER

21 In order to protect confidential information obtained by the parties in connection with this  
22 case, the parties, by and through their respective undersigned counsel and subject to the approval  
23 of the Court, hereby agree as follows:

24 Part One: Use Of Confidential Materials In Discovery

25 1. Any party or non-party may designate as Confidential Information (by stamping  
26 the relevant page or as otherwise set forth herein) any document or response to discovery which  
27 that party or non-party considers in good faith to contain information involving trade secrets, or

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-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER  
CASE NO. CIV533328



1 confidential business, financial, or personal information, including personal financial information  
2 about any individual or entity; information regarding any individual's or entity's banking  
3 relationship with any banking institution, including information regarding financial transactions  
4 or financial accounts, and any information regarding any individual or entity that is not otherwise  
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and  
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or  
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as  
8 otherwise set forth herein) any document or response to discovery which that party or non-party  
9 considers in good faith to contain information involving highly sensitive trade secrets or  
10 confidential business, financial, or personal information, the disclosure of which would result in  
11 the disclosure of trade secrets or other highly sensitive research, development, production,  
12 personnel, commercial, market, financial, or business information, or highly sensitive personal  
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the  
14 California Rules of Court or under other provisions of California law. Where a document or  
15 response consists of more than one page, the first page and each page on which confidential  
16 information appears shall be so designated.

17       2. A party or non-party may designate information disclosed during a deposition or in  
18 response to written discovery as Confidential Information or Highly Confidential Information by  
19 so indicating in said responses or on the record at the deposition and requesting the preparation of  
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,  
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the  
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated  
23 as Confidential Information or Highly Confidential Information. Any other party may object to  
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the  
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has  
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.  
27 After the thirty (30) day period for designation has lapsed, any documents or information  
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9  
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies  
3 of the designated material in their possession or control with the specified designation. A party  
4 that makes original documents or materials available for inspection need not designate them as  
5 Confidential Information or Highly Confidential Information until after the inspecting party has  
6 indicated which materials it would like copied and produced. During the inspection and before the  
7 designation and copying, all of the material made available for inspection shall be considered  
8 Highly Confidential Information.

9       3. All Confidential Information or Highly Confidential Information produced or  
10 exchanged in the course of this case (not including information that is publicly available) shall be  
11 used by the party or parties to whom the information is produced solely for the purpose of this  
12 case. Confidential Information or Highly Confidential Information shall not be used for any  
13 commercial competitive, personal, or other purpose. Confidential Information or Highly  
14 Confidential Information must be stored and maintained by a receiving party at a location and in a  
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated  
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only  
17 the Confidential Information or Highly Confidential Information produced or exchanged in this  
18 case, but also (1) any information copied or extracted from or reflecting the Confidential  
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or  
20 compilations of Confidential Information or Highly Confidential Information; and (3) any  
21 testimony, conversations, or presentations by parties or their counsel that might reveal  
22 Confidential Information or Highly Confidential Information. However, the protections  
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any  
24 information that is in the public domain at the time of disclosure to a receiving party or becomes  
25 part of the public domain after its disclosure to a receiving party as a result of publication not  
26 involving a violation of this Stipulated Protective Order, including becoming part of the public  
27 record through trial or otherwise; and (b) any information known to the receiving party prior to  
28

the disclosure or obtained by the receiving party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the designating party.

4. Except with the prior written consent of the other parties, or upon prior order of this Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any person other than:

- (a) counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for this litigation;
  - (b) employees of such counsel;
  - (c) individual parties or officers or employees of a party, to the extent deemed necessary by counsel for the prosecution or defense of this litigation;
  - (d) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information, and provided that if the party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party, or designating non-party, before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;
  - (e) any authors or recipients of the Confidential Information or a custodian;
  - (f) the Court, court personnel, and court reporters; and
  - (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall

Confidential Information may be disclosed to a witness who will not sign

the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

8       5.     Except with the prior written consent of the other parties, or upon prior order of  
9     this Court obtained after notice to opposing counsel, Highly Confidential Information shall be  
10    treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except  
11    that it shall not be disclosed to individual parties or directors, officers or employees of a party, or  
12    to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13        6. Any persons receiving Confidential Information or Highly Confidential  
14 Information shall not reveal or discuss such information to or with any person who is not entitled  
15 to receive such information, except as set forth herein. If a party or any of its representatives,  
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential  
17 Information to persons who are not authorized to use or possess such material, the party shall  
18 provide immediate written notice of the disclosure to the party whose material was inadvertently  
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential  
20 Information is being used or possessed by a person not authorized to use or possess that material,  
21 regardless of how the material was disclosed or obtained by such person, the party shall provide  
22 immediate written notice of the unauthorized use or possession to the party whose material is  
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding  
24 such possible use or possession.

25        7. In connection with discovery proceedings as to which a party submits Confidential  
26 Information or Highly Confidential Information, all documents and chamber copies containing  
27 Confidential Information or Highly Confidential Information which are submitted to the Court  
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If  
2 Confidential Information or Highly Confidential Information is included in the first page attached  
3 to the outside of the envelopes, it may be deleted from the outside copy. The word  
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the  
5 following form shall also be printed on the envelope:

6       "This envelope is sealed pursuant to Order of the Court, contains Confidential  
7       Information and is not to be opened or the contents revealed, except by Order of the  
8       Court or agreement by the parties."

9       8. A party may designate as Confidential Information or Highly Confidential  
10      Information documents or discovery materials produced by a non-party by providing written  
11      notice to all parties of the relevant document numbers or other identification within thirty (30)  
12      days after receiving such documents or discovery materials. Until the thirty (30) day period for  
13      designation has lapsed, any documents or discovery materials produced by a non-party shall be  
14      treated as Confidential Information. Any party or non-party may voluntarily disclose to others  
15      without restriction any information designated by that party or nonparty as Confidential  
16      Information or Highly Confidential Information, although a document may lose its confidential  
17      status if it is made public. If a party produces materials designated Confidential Information or  
18      Highly Confidential Information in compliance with this Order, that production shall be deemed  
19      to have been made consistent with any confidentiality or privacy requirements mandated by local,  
20      state or federal laws.

21       9. If a party contends that any material is not entitled to confidential treatment, such  
22      party may at any time give written notice to the party or non-party who designated the material.  
23      The party or non-party who designated the material shall have twenty (20) days from the receipt  
24      of such written notice to apply to the Court for an order designating the material as confidential.  
25      The party or non-party seeking the order has the burden of establishing that the document is  
26      entitled to protection.

27  
28

1           10. Notwithstanding any challenge to the designation of material as Confidential  
2 Information or Highly Confidential Information, all documents shall be treated as such and shall  
3 be subject to the provisions hereof unless and until one of the following occurs:

- 4           (a) the party or non-party who claims that the material is Confidential  
5           Information or Highly Confidential Information withdraws such  
6           designation in writing; or  
7           (b) the party or non-party who claims that the material is Confidential  
8           Information or Highly Confidential Information fails to apply to the Court  
9           for an order designating the material confidential within the time period  
10           specified above after receipt of a written challenge to such designation; or  
11           (c) the Court rules the material is not Confidential Information or Highly  
12           Confidential Information.

13           11. All provisions of this Order restricting the communication or use of Confidential  
14 Information or Highly Confidential Information shall continue to be binding after the conclusion  
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the  
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)  
17 days either (a) return such documents to counsel for the party or non-party who provided such  
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly  
19 Confidential Information is returned or destroyed, the receiving party must submit a written  
20 certification to the producing party (and, if not the same person or entity, to the designating party)  
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential  
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not  
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or  
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,  
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or  
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The  
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and  
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the  
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
6 including the time limits for filing any motions or applications for extension of time pursuant to  
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce  
8 the terms of this Order.

9           12. Nothing herein shall be deemed to waive any applicable privilege or work product  
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
11 protected by privilege or work product protection. Any witness or other person, firm or entity  
12 from which discovery is sought may be informed of and may obtain the protection of this Order  
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition  
14 or similar proceeding.

15           13. In the event that any Confidential Information or Highly Confidential Information  
16 is inadvertently produced without such designation, the party or non-party that inadvertently  
17 produced the information without designation shall give written notice of such inadvertent  
18 production promptly after the party or non-party discovers the inadvertent failure to designate  
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the  
20 inadvertent failure to designate), together with a further copy of the subject information  
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production  
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the  
23 information that was inadvertently produced without designation shall promptly destroy the  
24 inadvertently produced information and all copies thereof, or, at the expense of the producing  
25 party or non-party, return such together with all copies of such information to counsel for the  
26 producing party and shall retain only the newly-produced versions of that information that are  
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not  
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section  
2 14 below.

3       14. In the event that any party or non-party inadvertently produces information that is  
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent  
5 Production Material"), the following shall apply:

6           (a) Such inadvertent production or disclosure shall in no way prejudice or  
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney  
8 work product protection, or other applicable protection in this case or any other federal or state  
9 proceeding, provided that the producing party shall notify the receiving party in writing of such  
10 protection or privilege promptly after the producing party discovers such materials have been  
11 inadvertently produced.

12           (b) If a claim of inadvertent production is made, pursuant to this Stipulated  
13 Protective Order, with respect to discovery material then in the custody of another party, that  
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent  
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent  
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the  
17 producing party, or destroy all such claimed Inadvertent Production Material (including  
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the  
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly  
20 authorizing such use.

21           (c) A party may move the Court for an order compelling production of the  
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The  
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact  
24 or circumstance of the inadvertent production. The producing party retains the burden of  
25 establishing the privileged or protected nature of any inadvertently disclosed or produced  
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall  
27 be treated in accordance with Paragraph 14(b) above.

9        15. The parties agree that should the production of source code become necessary,  
10 they will need to amend or supplement the terms of this Order. To the extent production of  
11 source code becomes necessary in this case, the parties will work expeditiously to propose  
12 amendments to this Order to cover any production of source code.

13        16. If a party is served with a subpoena or a court order issued in other litigation that  
14 compels disclosure of any Confidential Information or Highly Confidential Information, the  
15 receiving party must:

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
23 the designating party whose Confidential Information or Highly Confidential Information may be  
24 affected.

If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order issued, unless the party has obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these  
2 provisions should be construed as authorizing or encouraging a receiving party in this action to  
3 disobey a lawful directive from another court.

4       17. The following additional terms apply to non-party discovery material:

5           (a) The terms of this Order are applicable to information produced by a non-  
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”  
7 Such information produced by non-parties in connection with this litigation is protected by the  
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
9 prohibiting a non-party from seeking additional protections.

10          (b) In the event that a party is required, by a valid discovery request, to  
11 produce a non-party’s confidential information in its possession, and the party is subject to an  
12 agreement with the non-party not to produce the non-party’s confidential information, then the  
13 party shall:

14              i. promptly notify in writing the requesting party and the non-party  
15 that some or all of the information requested is subject to a confidentiality agreement with a non-  
16 party;

17              ii. promptly provide the non-party with a copy of the Stipulated  
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
19 description of the information requested; and

20              iii. make the information requested available for inspection by the non-  
21 party.

22           (c) If the non-party fails to object or seek a protective order from this Court  
23 within 28 days of receiving the notice and accompanying information, the receiving party may  
24 produce the non-party’s confidential information responsive to the discovery request. If the non-  
25 party timely seeks a protective order, the receiving party shall not produce any information in its  
26 possession or control that is subject to the confidentiality agreement with the non-party before a  
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the  
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly  
2 Confidential Information.

3        18. Nothing in this Stipulated Protective Order shall be construed to preclude any  
4 party from asserting in good faith that certain Confidential Information or Highly Confidential  
5 Information requires additional protections. The parties shall meet and confer to agree upon the  
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party  
7 waives any right it otherwise would have to object to disclosing or producing any information or  
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives  
9 any right to object on any ground to use in evidence of any of the material covered by this  
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any  
11 person to seek its modification by the Court in the future.

## **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly  
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other  
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,  
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those  
17 Rules.

18        19. A party that files with the Court, or seeks to use at trial, materials designated as  
19 Confidential Information or Highly Confidential Information, and who seeks to have the record  
20 containing such information sealed, shall submit to the Court a motion or an application to seal,  
21 pursuant to California Rule of Court 2.551.

22        20. A party that files with the Court, or seeks to use at trial, materials designated as  
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who  
24 does not seek to have the record containing such information sealed, shall comply with either of  
25 the following requirements:

26 (a) At least ten (10) business days prior to the filing or use of the Confidential  
27 Information or Highly Confidential Information, the submitting party shall  
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information  
2 pursuant to this Order, of the submitting party's intention to file or use the  
3 Confidential Information or Highly Confidential Information, including  
4 specific identification of the Confidential Information or Highly  
5 Confidential Information. Any affected party or non-party may then file a  
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

- 7 (b) At the time of filing or desiring to use the Confidential Information or  
8 Highly Confidential Information, the submitting party shall submit the  
9 materials pursuant to the lodging-under-seal provision of California Rule of  
10 Court 2.551(d). Any affected party or non-party may then file a motion to  
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)  
12 business days after such lodging. Documents lodged pursuant to California  
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall  
14 be unsealed upon expiration of ten (10) business days, absent the filing of a  
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or  
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)  
18 shall contain sufficient particularity with respect to the particular Confidential Information or  
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings  
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22  
23 DATED: \_\_\_\_\_, 2016

24 **PERKINS COIE LLP**

25 By: \_\_\_\_\_  
26 Julie E. Schwartz

27 *Attorneys for Defendant  
Facebook, Inc.*

1 DATED: \_\_\_\_\_, 2016

BIRNBAUM & GODKIN, LLP

2 By:

3 David Godkin

4 Attorneys for Plaintiff  
5 SIX4THREE, LLC

6

7 **IT IS SO ORDERED.**

8 DATED: 10/24, 2016

9

10   
11 JUDGE OF THE SUPERIOR COURT

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## CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential  
Information is being provided to me pursuant to the terms and restrictions of the Stipulation and  
Protective Order Regarding Confidential Information filed on \_\_\_\_\_, 2016, in  
*Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328  
("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint \_\_\_\_\_ located at the address of  
19 \_\_\_\_\_ as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

22 I declare under penalty of perjury that the foregoing is true and correct and that this  
23 certificate is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016, at [Redacted]

**Redacted**  **Redacted**

**Address:**

Phone:

# Durie Tangri

Sonal N. Mehta  
415-376-6427 (direct)  
415-362-6666 (main)  
smehta@durietangri.com

March 6, 2019

## VIA EMAIL

Ravi Naik  
Irvine Thanvi Natas Solicitors  
19 - 21 Great Tower Street  
Tower Hill  
London, EC3R 5AQ  
rmaik@itnsolicitors.com

Re: Redacted

Dear Mr. Naik,

We are in receipt of your correspondence dated March 5, 2019. As you know, we represent Facebook in *Six4Three, LLC v. Facebook Inc., et al.*, Case No. CIV533328, which is currently pending in San Mateo Superior Court, in California. As you know, the case has been the subject of significant international attention because Six4Three and its legal team have admitted to leaking Facebook's confidential and highly confidential materials in violation of multiple orders of the Superior Court. As part of the investigation into these violations, it has recently come to light that Six4Three retained your client, Redacted, Redacted, to consult on the litigation and, in the process, disclosed Confidential and Highly Confidential Facebook documents to Redacted.

At the outset, we disagree that Redacted "has been cut out from the process to date." Six4Three's counsel of record has stated that, until early January 2019, Redacted served as a retained expert in this litigation. In that capacity, Redacted worked for and at the direction of Six4Three's counsel of record, and there is no reason that Redacted would have been "cut out from the process" or "kept from these proceedings" except at the hands of the Six4Three legal team with whom he was working. In any event, the San Mateo Superior Court maintains public records of this litigation online. Those records, and developments in this case generally, have been the subject of international media attention for months. Indeed, Redacted has commented extensively on these proceedings since Mr. Kramer illegally disclosed Facebook's Confidential and Highly Confidential information to the DCMS Committee. See generally <https://twitter.com/podehaye/>.

You asked that Facebook provide documents related to Six4Three's discussions of Redacted role in the litigation with journalists. Because these are communications between Six4Three's legal team (with whom Redacted was coordinating) and members of the media (with whom we have reason to believe

Ravi Naik  
March 6, 2019  
Page 2

[Redacted] was directly in contact), we assume that [Redacted] is already aware of these communications or can readily obtain them from the Six4Three team with whom he was working. Suffice to say, the communications show that Six4Three and its legal team specifically suggested that journalists could rely on [Redacted] as an anonymous source who could confirm Six4Three's claims about the contents of Facebook's Confidential and Highly Confidential documents for international media, and expressly discussed the need to keep [Redacted] role in these communications secret from Facebook and the Court. Those discussions occurred within days of [Redacted] engagement as an expert in this action.

While we appreciate your effort to provide "some clarity to [Redacted] role," your letter raises more questions and concerns than it answers. Having agreed to be subject to the jurisdiction of the Superior Court in San Mateo County for any enforcement proceedings relating to the Court's protective order and having expressed his desire to be directly involved in this inquiry, we expect that [Redacted] will have no objection to promptly addressing the following queries so that Facebook and the Court can evaluate the appropriate next steps. In particular:

*First*, although your letter acknowledges that [Redacted] was provided with the Court's protective order and executed the certificate declaring under penalty of perjury that he would be bound by it, your letter is noticeably silent on whether [Redacted] actually complied with the terms of the protective order. As you know, the Court's order demanded that [Redacted] address in a sworn declaration whether he, among other matters, complied with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information[.]". That declaration was due yesterday, March 5, 2019. To be clear, that declaration should be made under penalty of perjury under California law and should address whether [Redacted] at any time confirmed, verified, or commented *in any way* on media or third-party inquiries regarding Facebook's Confidential and Highly Confidential information. We remind you that [Redacted] "consent[ed] to the jurisdiction of the San Mateo Superior Court for the purpose of enforcing the [Stipulated Protective Order.]". Please comply immediately.

*Second*, and relatedly, your letter is also noticeably silent on what [Redacted] did with Facebook's Confidential or Highly Confidential information (or copies, summaries, excerpts, or compilations thereof) between the time he was engaged in this matter and executed a protective order certificate (both on May 14, 2018) and when he says he destroyed all Facebook Confidential and Highly Confidential information ("between 4 January 2019 and 11 January 2019."). This silence is particularly concerning because, based on Annex 1 to your letter, it appears that a number of documents that were provided to [Redacted] pursuant to the requirements of the protective order (and otherwise sealed by the Court) have since been publicly leaked via a Github share maintained by [Redacted]. In publicizing the leak of these sealed materials on Twitter, an investigative journalist working with [Redacted], specifically pointed to [Redacted].

Redacted Redacted [Follow](#)

Important previously unpublished emails, internal documents have been disclosed [github.com/BuxtonTheRed/btrmisc](https://github.com/BuxtonTheRed/btrmisc) ... Docs reveal @Facebook as "digital gangsters" as UK parl's Redacted Redacted calls them #Six4ThreeFiles Redacted Redacted @Video\_Forensics Redacted

 BuxtonTheRed/btrmisc  
Miscellaneous materials. Contribute to BuxtonTheRed/btrmisc development by creating an account on GitHub.  
[github.com/BuxtonTheRed/btrmisc](https://github.com/BuxtonTheRed/btrmisc)

10:39 AM - 22 Feb 2019

Alone, and in conjunction with the other information we have learned to date, Facebook naturally has serious concerns that Redacted may have been involved (directly or indirectly) in the distribution of confidential and sealed Facebook documents (or the disclosure of information contained in those documents) in violation of multiple court orders. Again, the Court has ordered that Redacted address in a sworn declaration whether he complied with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information[.]". That declaration should therefore detail and attach all communications and correspondence between Redacted (or anyone working with or on behalf of Redacted, including counsel), on the one hand, and (1) the DCMS Committee; (2) Redacted (or Redacted staff); (2) Redacted; (3) Redacted; (4) Redacted; (5) any other member of the media; (6) Redacted; (7) any other governmental agency; (8) any non-profit organization; or (9) any other third party, on the other hand, since May 14, 2018 and relating to Facebook. The sworn declaration should specifically identify (but should not be limited to) any disclosure of any Facebook document or any information contained in a Facebook Confidential or Highly Confidential document (or summary or compilation thereof) to any third party, or any discussion with any third party related to the subject matter of the Confidential and Highly Confidential Facebook documents received by Redacted.

*Third*, your letter does not address at all communications between Six4Three and its legal team and third parties (including media, governmental agencies, or non-profits) in which Redacted was involved. Although we have yet to receive all of the relevant documents, the limited information we have to date shows that Redacted was involved in communications between Six4Three and its legal team and such

third parties, including at least Redacted . Redacted sworn declaration should therefore detail and attach all communications and correspondence regarding Facebook Confidential and Highly Confidential material between Six4Three and its legal team and third parties (including media, governmental agencies, or non-profits) in which Redacted was involved.

*Fourth*, your letter states that Redacted is not a lawyer and was therefore reliant on Birnbaum & Godkin, LLP to understand the US process and the terms of the Protective Order,” and also acknowledges “Klein & Gross LLP [sic] were appointed as Redacted agent for service of process, on the recommendation of Birnbaum & Godkin, LLP. Redacted was not provided with any independent legal advice on the terms of the order at the time it was provided to him nor when it was executed.” Redacted sworn declaration should therefore detail his understanding of his obligations under the protective order, including any advice or instructions he received from Birnbaum & Godkin or Gross & Klein relating to the requirements of, or compliance with, the protective order.

*Fifth*, your letter raises serious questions as to the scope of Redacted engagement. Your March 5, 2019 letter states that Redacted “was approached by Mr Godkin to act as an expert on public interest elements of the Six4Three litigation.” Redacted sworn declaration should therefore specifically detail the scope of his engagement, (including the specific “public interest elements of the Six4Three litigation” on which he was purportedly consulting) and what expertise Redacted understood he was offering on those topics. For clarity, that sworn declaration should also detail the bases for your statement that the “terms of the retainer were not well drafted but that Redacted was retained by Birnbaum & Godkin, LLP to ‘assist [them] in reviewing Facebook’s arguments related to digital privacy issues.’ This is what our client understood his role to be and acted at the instruction of Birnbaum & Godkin, LLP and their clients in this litigation.”

*Sixth*, you state that Redacted “maintained a contemporaneous record of the documents he had received, as and when he received them.” Please produce this record immediately. In addition, Redacted sworn declaration should attest to its authenticity and explain its contents. Your disclosure of “Annex 1: Documents deleted” is incomplete, including because it does not (1) identify which discovery material Six4Three and its legal team provided to Redacted or when, or (2) identify the “internal case summaries” that Redacted received or when.

*Seventh*, as you know, Paragraph 4 of the Stipulated Protective Order in this matter provides that, “if [a] party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party . . . before disclosing any Confidential Information to that individual[.]” See Stipulated Protective Order ¶ 4(d). Please provide a list of Redacted employers or engagements since April 10, 2015.

*Finally*, to the extent not already requested above, we request that you promptly produce all communications or correspondence between Redacted (or anyone working with or on behalf of Redacted, including counsel) and Six4Three, Redacted , Redacted , or anyone at Birnbaum & Godkin or Gross & Klein relating to Facebook or the litigation between Six4Three and

Ravi Naik  
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Facebook. Six4Three's legal team and **Redacted** have put those communications directly at issue through their statements on these subjects, and Facebook and the Court are entitled to evaluate the accuracy and completeness of those statements.

We request a response to these questions no later than close of business on March 7, 2019 so that we can promptly raise any outstanding questions or issues with the Court.

Very truly yours,



Sonal N. Mehta

SNM:za

cc: godkin@birnbaumgodkin.com  
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By email: [smehta@durietangri.com](mailto:smehta@durietangri.com)

07 March 2019

Our ref: RAN/32411

Dear Ms Mehta

**Redacted**

We write further to your letter of 6 March 2019. That letter raises a number of issues that we address in turn below. However, that letter also clarifies that the order of 1 March 2019, in so far as it related to our client, was procured on the basis of conjecture, misrepresentation and a misunderstanding of **Redacted** position.

We accordingly ask for you to provide this correspondence to the Honorable Judge V. Raymond Swope, along with the relevant evidence, for the court to reconsider the terms of the order of 1 March 2019 made against our client. If you refuse to do so, please let us know and provide us with the Judge's contact details so we may write to him directly.

We address the issues arising in turn below.

#### 1. Representation

You "disagree" that **Redacted** has been cut out of the process leading to the order relating to him. The basis for this assertion is that **Redacted** "worked for and at the

direction of Six4Three's counsel of record, and there is no reason that Redacted would have been "cut out from the process" or "kept from these proceedings" except at the hands of the Six4Three legal team with whom he was working." This position is misconceived and contradictory.

Your client's position is based on (1) our client having previously been instructed to provide expert assistance to the Plaintiffs in this case and (2) that the Six4Three legal team would have kept him abreast of developments. This is misconceived:

1. Redacted was instructed to provide expert assistance to the Plaintiffs. He was not a Plaintiff himself nor was he represented by Birnbaum & Godkin, LLP.
2. You accept that your client made no efforts before, during or after their *ex parte* application to contact our client.
3. You accept that your client expected our client to have been updated by the Plaintiff and their legal team. There was no reason for the Plaintiffs or Birnbaum & Godkin LLP to keep him updated. That you expected he would betray your client's misunderstanding of our client's role. You have sought to portray his as somehow in cahoots with the Plaintiffs. This could not be further from the truth and no evidence has been provided otherwise.
4. In fact, Redacted was not represented at all throughout these proceedings. He had no reason to be legally represented, as an independent expert to the proceedings.
5. Despite your assertion that the legal team representing the Plaintiffs have breached the order, you suggest that our client seek their legal counsel. This is a curious suggestion for you to make.
6. Rather, our client has sensibly instructed independent legal advice at his own expense.

You further state that the documents that led to the order are available online. This is a non sequitur. Your application was made on an *ex parte* basis.

There was no reason for the application to be made on an *ex parte* basis in respect of our client, given your previous lack of engagement with our client. Rather, you should have reached out to our client for his position as soon as you learned of his involvement and before making the application. Had you have made contact with our client, you could have avoided the inaccuracies and misrepresentation of our client contained within your *ex parte* application. You could have also avoided this entire chain of correspondence. Regrettably, you did not do so.

Whilst our client appreciates that your client had concerns over the integrity of the documents and sought to preserve their position, he has played no part in the concerns articulated in your *ex parte* application. This much would have been clear had you simply sought his position. You did not do so.

Our client's position is clear. He was instructed to act as an independent expert and did so. He acted on instructions at all times. He now finds himself caught up in the wrongdoing of others. Rather than understand his position, Facebook have sought to perpetuate his problem by way of a misguided and flawed *ex parte* application

## 2. Purpose of the 1 March 2019 Order

Having considered the *ex parte* application and supporting evidence, we note that your client's have already identified those that have breached the Protective Order. In particular, your letter of 6 March 2018 expressly states that "Six4Three and its legal team have admitted to leaking Facebook's confidential and highly confidential materials in violation of multiple orders of the Superior Court."

On the face of the application, it was designed to (1) contain further breaches and (2) understand the events leading to the disclosure of material by the DCMS Committee in the United Kingdom. To that end, our client can confirm:

1. He had no involvement in the passing of confidential or highly confidential information to the DCMS Committee, whether from the Plaintiff, their legal team or otherwise. Your client is already aware of the circumstances and chronology of those events. The individuals that have accepted being involved in this breach have not named [Redacted] as being involved, as he is not involved. You have no evidence to suggest otherwise and your client has rightly not suggested that our client had any involvement.
2. In respect of further breaches since the DCMS leak, our client was again not involved. As you are aware, our client deleted all the information as he was requested to by 11 January 2019.
3. Our client is not aware of how [Redacted] received these documents. The basis for your client's assertion that our client is somehow involved with [Redacted] is that he included [Redacted] in a tweet. Our client does not know why [Redacted] included him in that tweet but can assume it is [Redacted]. Holding our client responsible for the actions of a third party on Twitter is without merit. It would be unfair to hold your client responsible for everyone that mentions them on social media. Our client should not be expected to be treated in any other way.

Our client was not therefore involved in the breaches of concern to Facebook or the court. No evidence has been put forward to suggest otherwise. Indeed, Facebook do not make such a claim but rather limit their accusations against our client to conjecture and misrepresentation of the evidence.

### 3. The ex parte application

Having considered the *ex parte* application, we note that it is inaccurate, misleading and based on no more than conjecture. We detail the inaccuracies below.

**We ask that you inform the court of this material misrepresentation accordingly so that the court can reconsider the terms of the order vis-à-vis our client.**

The *ex parte* application states<sup>1</sup> (sic) "Gross & Klein produced a new e-mail sent by Redacted [REDACTED], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously"." That suggests that there is evidence that Redacted [REDACTED] sent an email stating that he is willing to provide or confirm details to reporters "anonymously". This is the totality of the evidence put forward against our client. There is no other submission made against Redacted [REDACTED] at all.

Our client strenuously denies having sent an email stating that he would act to provide or confirm information to reporters anonymously. He did not do so. We accordingly asked you for evidence of him having sent such an email in our letter of 5 March 2019. You refused to do so, instead directing our client to the *Six4Three* team (i.e. the parties that have admitted breaching the terms of the order).

No such evidence will exist. We assume that your client has instead quoted an email from a third party, as though it had come from our client. This is disingenuous, misleading and concerning, particularly where the application was made on an *ex parte* basis. Your client would have been under an obligation of full and frank disclosure when making an application on such a basis. It is regrettable that you did not comply with that obligation, which in turn undermines the application against our client in its entirety.

The 1 March 2019 order, in so far as it affects our client, was in fact procured on the basis of this single inaccurate issue. As it was made on an *ex parte* basis, our client has been unable to explain his position to the court and without having had a chance to understand the basis for the concerns against him. Having now considered those concerns, it is clear that they have no evidential basis.

This leaves two choices for your client:

1. Provide our client with the evidence that: (1) he has breached the terms of the Protective Order; and (2) he stated that he was willing to share or confirm confidential or highly confidential information to reporters "anonymously." Despite

requesting this in our letter of 5 March 2019, no such evidence has been provided to our client and our client understands that none will be available. To be clear, what a third party said about our client is irrelevant. Our client cannot be held responsible for the actions of a third party.

2. Alternatively, your client must accept that they misled the court in the *ex parte* application and ask the court to review the order against our client.

Your client will appreciate that the threat of perjury against our client is something he takes very seriously. However, at present that threat derives from conjecture at best and misrepresentation at worst.

Our client has had to pay for independent legal advice, for an issue that is not of his making. In order for the court and our client to understand if there is any basis for the suggestion that he has breached the Protective Order, such to require further information from our client, please ensure you respond to the issues raised above by 16:00 GMT on 9 March 2019.

**To be clear, our client is prejudiced by the manner in which Facebook sought the order and the inaccuracies within the *ex parte* application. Facebook have also already identified those that have breached the Protective Order and our client is no longer in possession of the documents. There is therefore little to be gained from our client providing further evidence to the court.**

**In order to avoid further prejudice, unfairness and cost to our client, we suggest that the court should release our client from the need for a further statement (1) in light of our correspondence and (2) in the absence of any evidence that he has breached the terms of the Protective Order.**

**Please ensure that this correspondence is placed before the Honorable Judge V. Raymond Swope as a matter of urgency.**

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<sup>1</sup> Page 7 lines 7 – 9

#### 4. Disclosure requests

You have made a series of disclosure requests from our client. Those request go beyond the terms of the 1 March 2019 order and there is in fact no basis for these requests. Rather, the requests are an expansive, abusive and ill-judged fishing expedition. For example, your request for "a list of Redacted employers or engagements since April 10, 2015" is simply absurd and without legal footing.

That your client would embark on such a course in fact betrays the real purpose for your client's application – to seek to find evidence from our client of a series of unrelated matters. The simple fact is that there is no evidence that our client has breached the Protective Order and there is no further justification for such an expansive disclosure request.

However, in order to assist your client, our client can confirm:

1. As above, our client does not know how Redacted received the confidential or highly confidential documents.
2. Our client received no legal advice at all on the terms on the Protective Order.
3. The annex to our letter of 5 March 2019 was an entire list of documents that he has received.
4. As you are aware, our client has deleted all of the confidential or highly confidential information. He cannot therefore produce evidence that is not in his control. We are surprised by your request for information that our client has already told you he has deleted.

Our client provided the documents to your client on 5 March 2019 to assist your client and the court. As above, the Protective Order was procured from the court on 1 March 2019 on the basis of inaccurate information. Our client accordingly reserves his position in respect of that order until the court has had an opportunity to understand our client's position and submissions on the *ex parte* application.

## 5. Summary

As the *ex parte* application was based on misrepresentation of the evidence, inaccuracies and conjecture, our client will not be complying with your requests until the court has had an opportunity to understand [Redacted] position.

As stated above, our client has been prejudiced by the manner in which Facebook sought the order and the misrepresentation of the evidence in the *ex parte* application. Had he been provided with an opportunity to explain his position before the application was made, he could have done so. Regrettably and as detailed above, the application was made in the absence of his position and proceeded on the basis of misrepresented facts. Facebook have also identified those that have breached the order and our client is no longer in possession of the documents. There is therefore little to be gained from our client providing further evidence to the court but producing such documentation would be costly and prejudicial to our client.

In order to avoid further prejudice and cost to our client, we suggest that the court should release our client from the need for a further statement in the absence of evidence that he has breached the terms of the Protective Order. Should the court, after a review of this correspondence, further order our client to provide this information he will review his position at that stage. However, we ask you to ensure that this correspondence is put before the court in determining the necessity of any further order against our client.

We therefore request that a copy of this letter, our letter of 5 March 2019 and your reply of 6 March 2019 is provided to the court and the Honorable Judge V. Raymond Swope as a matter of some urgency. If you are not willing to do so, please provide us with the contact details for the Judge accordingly so we may make contact directly.

Yours sincerely

**Irvine Thanvi Natas Solicitors**  
cc. David Godkin, Birnbaum & Godkin, LLP

# Durie Tangri

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March 8, 2019

**VIA EMAIL**

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Re: **Redacted**

Dear Mr. Naik,

We received your letter dated March 7, 2019 (hereinafter “Naik March 7 Letter”). We appreciate your effort to clarify certain questions set forth in our letter dated March 6, 2019 (hereinafter “Mehta March 6 Letter”). Specifically, we understand your position that **Redacted** (1) received no legal advice about the protective order; (2) received only those documents identified by Annex 1 to your March 5, 2019 letter, (3) had no involvement in the passing of confidential or highly confidential information to the DCMS Committee, and (4) does not know how **Redacted** received Facebook’s confidential or highly confidential information, including those documents leaked via **Redacted** Github share.

Despite these responses, several of Facebook’s most important questions remain outstanding. In addition, your letter demonstrates a fundamental misunderstanding of this litigation and your client’s role in the dissemination of Facebook’s confidential and highly confidential information. We clarify those issues below.

*First*, your letter does not answer the simple, central question posed by Facebook and the Court: Did **Redacted** comply with all terms of the protective order, including by “not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information”? At risk of being pedantic, that question is not answered by evasive statements such as, “[**Redacted**] has played no part in the concerns articulated in your *ex parte* application,” “[**Redacted**] was again not involved [in further breaches since the DCMS leak],” and “[**Redacted**] was not . . . involved in the breaches of concern to Facebook or the court.” Nor is it any answer that certain individuals have admitted their breach of the Stipulated Protective Order in this matter, e.g., Naik March 7 Letter at 3: Facebook’s question is whether **Redacted** breached that order.

Ravi Naik  
March 8, 2019  
Page 2

Pursuant to that inquiry, Facebook asked [Redacted] specific questions regarding his compliance with the protective order. *See generally* Mehta March 6 Letter at 2-4. Your letter makes no attempt to answer the vast majority of these questions. For example and without limitation, your March 7, 2019 letter:

- neither denies that [Redacted] communicated with individuals involved in the release of Facebook's documents, nor attaches such communications. *See* Mehta March 6 Letter at 3 (requesting communications with "(1) the DCMS Committee; (2) [Redacted] (or his staff); (2) [Redacted]; (3) [Redacted]; (4) [Redacted]; (5) any other member of the media; (6) [Redacted]; (7) any other governmental agency; (8) any non-profit organization; or (9) any other third party," since May 14, 2018 and relating to Facebook).
- neither denies that [Redacted] received communications between Six4Three and its legal team and third parties, nor attaches such communications. *See* Mehta March 6 Letter at 3-4.
- fails to set forth [Redacted] understanding of his obligations under the protective order, including whether that order prevented him from anonymously confirming for journalists or third parties the substance of Six4Three's allegations or the content of Facebook's confidential and highly confidential documents based on [Redacted] review of those documents. *See* Mehta March 6 Letter at 4.
- fails to identify the specific "public interest elements of the *Six4Three* litigation" on which [Redacted] was purportedly consulting, and what expertise [Redacted] understood he was offering on those topics. *See* Mehta March 6 Letter at 4.
- neither attaches the "contemporaneous record of the documents [Redacted] had received," nor provides a basis for refusing to do so. *See* Mehta March 6 Letter at 4.
- neither attaches communications between [Redacted] and Six4Three or its legal team, nor provides a basis for refusing to do so. *See* Mehta March 6 Letter at 4-5.

Rather than answer these simple questions, your letter argues that [Redacted] does not have to: The Court's Amended Case Management Order No. 19, your letter argues, resulted from a "material misrepresentation," whereby Facebook "quoted an email from a third party, as though it had come from our client." *See* Naik March 7 Letter at 5-6. We find this response curious, because it is false and because you purport to have "considered the *ex parte* application and supporting evidence" and thus know that there was no suggestion that [Redacted] sent the email, only that it evidences Six4Three's plan to use [Redacted] to leak confidential information to the press. Simply put, your letter mischaracterizes the bases for Facebook's concerns regarding [Redacted]. At risk of being repetitive, we set them forth below.

In late March 2018, Six4Three's CEO—Redacted—contacted reporters at *The Guardian* to discuss Six4Three's lawsuit against Facebook. Redacted spoke by phone with Redacted on March 29, 2018, after which he sent her an e-mail stating that he "look[ed] forward to . . . connecting with the folks you mentioned." See BG007204. Redacted replied a few days later: She said that she "[had not] managed to catch up with Redacted or Redacted yet[.]" *Id.* Weeks passed, and Redacted wrote to Kramer again: "I also spoke to Redacted," she wrote, "Redacted Redacted . . ." Kramer responded a few days later, requesting "an introduction to Redacted" so that Six4Three could urge Redacted to file an amicus brief to unseal hundreds of confidential and highly confidential Facebook documents. See BG007206. Redacted sent Redacted personal e-mail address to Kramer on May 4, 2018 and said that "Redacted said he'd be happy for you to get in touch[.]" BG007208.

Five days after that, Redacted told Redacted that Six4Three had "reached out to Redacted" and "setup [a call] for next week." BG007211. Redacted wrote back within days, saying that she "had a chat with Redacted about how this might work." BG007212 (emphasis added). An hour later, Kramer responded, describing Six4Three's "off the record" conversations with "about a couple dozen news organizations." BG007213. Kramer then told Redacted that Redacted had agreed to serve as Six4Three's expert: "As soon as Redacted gets the required document back to us," Mr. Kramer wrote, "*we will share the evidence with him since he has agreed to serve as an expert witness in the case.*" BG007213 (emphasis added).

Three days later, on May 14, 2018, Redacted executed an engagement letter with Six4Three and the Certification annexed to the case's protective order. Under the engagement letter, Redacted agreed to "*refrain from speaking with anyone about this matter* and [to] treat all communications with my client and my firm as privileged." Pursuant to the protective order, Redacted agreed not to "reveal or discuss [Confidential Information or Highly Confidential Information] to or with any person who is not entitled to receive such information[.]"

A week after Redacted executed the engagement letter and protective order, Kramer and Redacted met face-to-face. Redacted sent an e-mail after the meeting to "lay out our thoughts at the moment." BG006391. *The Guardian's* "ideal" coverage plan, she said, would include "[a] main news story. . . And – ideally – *some supporting quotes from Redacted* I understand these need to be anonymous but it would still be really useful to have these I think." Redacted—Six4Three's sole investor and a member of Six4Three's "legal team"—wrote back that night, asking whether Redacted could "be an anonymous source verifying our allegations without disclosing him as an expert witness in the case." BG006935 (emphasis added). Redacted responded a few minutes later: "Re Redacted she said, "understood, though would still like to use anon quotes if possible." BG006395 (emphasis added). Redacted then responded to that message, writing, "*I think anonymous quotes from Redacted would be fine* so long as he isn't identified as an expert witness[.]" BG006398 (emphasis added). A few minutes later, Redacted wrote Redacted again: "The key thing with Redacted is that if the article identifies him as an expert witness or bases his confirmation of the allegations on the fact that he has reviewed the evidence, then Facebook will cry foul[.]" BG006399 (emphasis added).

Around the time these discussions took place, Six4Three's legal team was urging media and non-profit organizations to file amicus briefs to unseal hundreds of Facebook documents improperly lodged in connection with an unrelated filing. [Redacted] was instrumental in that campaign, as well. Despite signing a contract on May 14, 2018 that he would not "speak[] with anyone about this matter," [Redacted] *the very next day* e-mailed reporters at the Associated Press—copying Six4Three's legal team—to suggest a call about "how journalists could benefit from the discovery process." BG001308. A day after that, [Redacted] played press secretary again when he connected Six4Three's legal team to a POLITICO reporter in Brussels and suggested a call. See BG000149. Two weeks later, Six4Three's legal team copied [Redacted] on an e-mail exchange with [Redacted] about amicus briefs. See GKLLP000200. After [Redacted] suggested a conference call to discuss the case with the nonprofit, [Redacted] responded, "I am ready to join at that time if need be." *Id.*

As these facts demonstrate, Amended Case Management Order No. 19 was not "procured on the basis of [a] single inaccurate issue," and your suggestion otherwise, appears to be based on a misunderstanding of the record or misinformation provided to you by others. See Naik March 7 Letter at 5. Either way, multiple e-mail exchanges involving [Redacted] over the course of weeks in the spring of 2018 suggest that he reviewed Facebook's confidential and highly confidential information in order to further Six4Three's objectives with the news media. For that reason, Facebook repeats its simple request: please provide a sworn statement (under penalty of perjury in California) addressing the specific questions we have raised, including in particular a sworn statement that [Redacted] complied with all terms of the protective order, including by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information."

*Second*, specifically regarding our request for [Redacted] employment and engagement history, you call that request "simply absurd and without legal footing." See Naik March 7 Letter at 7. We disagree. [Redacted] agreed to be bound by the terms of the protective order, which require him to provide this information. Specifically, Paragraph 4(d) of the protective order provides that, "if the [retaining] party chooses a consultant or expert *employed by the opposing party or one of its competitors*, the party shall notify the opposing party . . . before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure[.]" (emphasis added). Only [Redacted] knows whether he has been employed or engaged by one of Facebook's competitors since the onset of this litigation. Accordingly, Facebook again requests that [Redacted] provide a list of his employers or engagements since April 10, 2015. Anything less deprives Facebook of the rights to which it is entitled under the protective order—to which [Redacted] agreed to be bound.

*Third*, your letter makes much of the fact that Facebook sought relief on an *ex parte* basis. E.g., Naik March 7 Letter at 3, 5, and 8. We do not think it productive to engage in point-for-point argument on this subject. We note only that Facebook was entitled to seek *ex parte* relief because Facebook faced—and, indeed, continues to face—"irreparable harm [and] immediate danger" as a result of Six4Three's

Ravi Naik  
March 8, 2019  
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abuse of Facebook's confidential and highly confidential information. *See generally* Cal. R. Ct., rule 3.1202(c). The Court itself acknowledged this in granting the *ex parte* application.

**Fourth**, your letter requests that Facebook forward your correspondence to the Court. *See* Naik March 7 Letter at 8. It is not Facebook's role to inform the Court regarding your correspondence. We suggest you discuss this matter with Mr. Godkin who engaged **Redacted** and was responsible for supervising his engagement.

**Finally**, as to your comment about Facebook's "real purpose" for its application, *see* Naik March 7 Letter at 7, Facebook's concern is about the improper disclosures of its confidential information and the integrity of the Court's orders. Your client promised to comply with all the terms of the Protective Order. We are seeking—and are entitled to—answers on whether he did so.

Very truly yours,



Sonal N. Mehta

SNM:za

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By email: [smehta@durietangri.com](mailto:smehta@durietangri.com)

13 March 2019

Our ref: RAN/32411

Dear Ms Mehta

## Redacted

We write further to your letter of 8 March 2019. We address the various issues arising in that letter in turn.

### 1. Misleading application

Your letter of 8 March 2019 seeks to provide a justification for the terms of your client's *ex parte* application against our client. Regrettably, that letter simply confirms that your client has misled the court. In particular:

1. The declaration by Mr Abrahamson stated "Gross & Klein produced a new e-mail sent by Redacted [REDACTED], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously"."
2. That statement expressly declares that our client was "willing to confirm details of Facebook's confidential information to reporters "anonymously"." There is no evidence of our client having said this, yet your client / Mr Abrahamson presented this as fact.

3. We asked for evidence of this purported email, in our letters of 5 and 7 March 2019. None has been forthcoming.
4. Rather, the material contained in your letter of 8 March 2019 confirms that you have no evidence that our client said that he would confirm details of the confidential or highly confidential information, anonymously or otherwise. None will be available. Instead, you have confirmed our client's suspicion that your client has misled the court, by quoting third parties as though that quote was directly taken from our client.

In sum, Mr Abrahamson's statement is misleading and seeks to portray those quotes as coming directly from our client. You have not denied that this was a misleading statement nor have you sought fit to explain this error to the court.

You state that our letter of 7 March 2019 shows a "misunderstanding of this litigation". To the contrary, our client now understands full well that you had misled the court. Misleading the court in any litigation is a serious procedural error. In fact, misleading the court is a very serious matter indeed in any context.

## 2. Terms of the order of 1 March 2019

Further and contrary to your letter of 8 March 2019, our client has not sought to deny that your client is entitled to make an *ex parte* application. Rather, our client's concern is that your client has done so on false pretences. Your letter of 8 March 2019 confirmed our client's fears.

At its highest, you have cited third parties who explain plans *about* our client. He was not aware of those plans and was not copied into that correspondence. Those quotes even go so far as confirming that our client was not aware of the case, let alone in receipt of the confidential / highly confidential documents at that stage. You nevertheless quote from those emails (of which our client was unaware) as though those words had come from our client. This was a misrepresentation.

Your client sought and procured the order on the basis of this single inaccurate issue. There is no other evidence against our client. We presume you sought to mislead the court as you in fact have no evidence that our client breached the terms of the Protective Order. That misrepresentation has nonetheless led to a punitive order against our client.

Your client has then made a series of requests from our client following that illicitly obtained order. To that end:

1. The vast majority of your requests are beyond the terms of the order of 1 March 2019 or the Protective Order. We assume you are either using the fact that such orders exist to seek extraneous information from our client or deliberately choosing to ignore the scope of the orders. Either way, this is not reasonable or fair to an independent party to proceedings.
2. You have confirmed that you will not provide this correspondence to the court and are refusing to provide us with the contact details for the court. Aside from being an astonishing position to take (no doubt because you are unwilling to advise the court that you have procured an order on the basis of material misrepresentation), we note that you have included our correspondence of 5 March 2019 on the public docket. There is no justification for this inconsistent position. The only basis for this inconsistency is the revelation of Facebook's misrepresentation.
3. You also confirm our understanding that the purpose of the order is to prevent further breaches. That concern is not applicable to our client, as he does not have the information to leak. He deleted it as he was requested to do.

Further, we note that your letter of 8 March 2019 avoids answering the vast majority of the questions raised in our letter of 7 March 2019. For instance, you have not explained why you misled the court or why you did not contact our client before making the *ex parte* application. You have also refused to provide the contact details for the Judge.

In this context, your letter of 8 March 2019 has not progressed matters but rather affirmed that our client should not engage with your expansive requests. Rather, our client repeats his position, as articulated in our letter of 7 March 2019. Our client has been accused of various breaches of the Protective Order, of which your client has no evidence. Our client is unaware why you consider that he has breached the terms of the order. Rather than explain this to the court, you have instead deliberately misled the court to procure an order against our client. That order should therefore be reviewed by the Honorable Judge, in light of the misrepresentations made in your *ex parte* application. If the Honorable Judge still considers that there is a need for our client to provide a statement, our client will consider his position at that stage.

### 3. Further matters

You have repeated the request for our client's employment and engagement history. You cite the Protective Order as a legal basis for this request. You have misread the Protective Order. That Protective Order places no such burden on our client. That order provides no rights against our client for Facebook. To the contrary, the terms of the order exist solely between the Plaintiffs and Facebook. Rather, you have no legal entitlement to information from our client and you have not provided any legal basis to suggest you are otherwise entitled to it.

Further, we note your suggestion that our client should ask Mr Godkin to provide our correspondence to the court. This is a rather remarkable suggestion for you to make, given that your case is that Mr Godkin has breached the terms of the order. We (surprisingly) find ourselves having to remind you that our client is not represented by Mr Godkin. Rather, you were requested to assist our client and the court by providing the court with our correspondence.

In light of your unreasonable refusal to provide our letter of 7 March 2019, we repeat our request for the contact details for the Honorable Judge V. Raymond Swope. If we do not receive those details by 4pm GMT on 15 March 2019, our client reserves his rights in respect of your client.

#### **4. Conclusion**

The facts are that (1) Facebook has misled the court and (2) you are refusing to tell the court or to provide the contact details for our client to inform the court of the same.

In order to avoid further prejudice and cost to our client, we put you on notice that we intend to provide our entire correspondence chain to the court. In doing so, we will inform the court of the material misrepresentation made in the statement by Mr Abrahamson. In light of that misrepresentation, we will suggest that the court should release our client from the need for a further statement in the absence of evidence that he has breached the terms of the Protective Order or that he is likely to.

In our letter to the court, we will also ask the court to weigh the need for the order against the costs to our client. Given that Facebook is unable to provide any evidence that our client has breached the order and went so far as misleading the court to procure the order, we anticipate the court will side with our client. Should the court, after a review of this correspondence, nevertheless further order our client to provide this information he will review his position at that stage.

We accordingly repeat our request for the contact details of the Judge so that we may write to him directly.

Finally, we note that you have put the Protective Order signed by our client onto the court docket without redacting our client's home address and telephone number. This is extremely concerning for our client. Please take **urgent** steps to redact this personal information from the Protective Order as currently on the docket.

Yours sincerely

**Irvine Thanvi Natas Solicitors**

cc. David Godkin, Birnbaum & Godkin, LLP

# Durie Tangri

Sonal N. Mehta  
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March 13, 2019

**VIA EMAIL**

Ravi Naik  
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19 - 21 Great Tower Street  
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rnaik@itnsolicitors.com

Re: Redacted

Dear Mr. Naik,

You have now written almost 20 pages about your client's involvement in Six4Three's case. But you refuse to answer the simple question whether your client, Redacted, complied with the protective order. Facebook fears that your silence on this question means that Redacted violated that order. Regarding your specific disagreements, Facebook has several responses.

*First*, we disagree with your position that we have provided "no evidence" that Redacted breached the protective order. See March 13, 2019 Letter at 4. Our March 8, 2019 letter provided an exhaustive recitation of documentary evidence implicating your client. See generally March 8, 2019 Letter at 2-4. We direct you to that letter for a fuller restatement of the evidence regarding your client. But as examples, our March 8, 2019 letter explained how Six4Three's legal team and journalists explicitly discussed using anonymous quotes from your client to further Six4Three's media objectives. *Id.* Those discussions took place *after* your client had signed his engagement letter with Six4Three and the protective order's Certification. *Id.* We also noted that your client personally contacted multiple reporters to discuss Six4Three's case *within days of executing an engagement letter barring him from "speaking with anyone about this matter."* Finally, we noted that your client offered to join a call discussing the case with a nonprofit group after executing the protective order's Certification. See *id.* (quoting GKLLP00020). Your letter refuses to explain any of this conduct.

Instead, your March 13, 2019 letter clings desperately to a single line from Facebook's *ex parte* application<sup>1</sup>, which reads: "Gross & Klein produced a new e-mail sent by Redacted,

<sup>1</sup> Your letter misrepresents the record on this point. The supporting declaration by Mr. Abrahamson does *not* state that "Gross & Klein produced a new e-mail sent by Redacted, Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters 'anonymously'." See March 13, 2019 Letter at 1. In fact, as

March 13, 2019

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Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters "anonymously." Compare March 13, 2019 Letter at 1, with Def.'s Ex Parte App. for an Order Enforcing the Stipulated Protective Order at 7:7-9. To be clear, that line does *not* state that [Redacted] said *anything* in the produced e-mail: Rather, the text—"Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters 'anonymously'"—is an *appositive*. An appositive is set off by a comma and "provides an explanatory equivalent" to a noun—in this case, to Redacted [Redacted]. See generally THE CHICAGO MANUAL OF STYLE at 314 (16th ed. 2010). Indeed, Facebook's brief would not make sense if "willing to confirm details" modified "e-mail"—simply put, people "will[]"; e-mails do not.

Moreover, your letter conveniently omits mention of *the very next line* in Facebook's *ex parte* application, which quoted directly from the e-mail that you accuse Facebook of misrepresenting: "In that e-mail, sent *mere days* after Six4Three explained the expert scheme to Redacted [Redacted], Redacted told the nonprofit Redacted [Redacted] ('[Redacted]') that he was 'ready to join [a conference call] at that time if need be.'" See *id.* at 7:9-12. Were that not enough, Facebook placed Redacted e-mail before the Court. See Abrahamson Decl. Supp. Def.'s Ex Parte Appl. (Feb. 25, 2019), Ex. 4. Facebook did not misrepresent your client's statements.

**Second**, we disagree that our requests are "beyond the terms of the order of 1 March 2019." See March 13, 2019 Letter at 3. To the contrary, the Court's Amended Case Management Order No. 19 demanded a "verified declaration of Redacted" addressing: "(1) the date of receipt of a copy of the Stipulated Protective Order and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3) the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information" pursuant to Paragraph 6 . . . ; (5) the date of destruction of confidential information in their custody or control; and (6) the date of confirmation of destruction of confidential information to Mr. Godkin[]." See Am. Case Management Order No. 19 ¶ 3. We understand that Mr. Godkin informed your client of this order on March 1, 2019. Your client consented to the Court's jurisdiction for purposes of enforcing the protective order, but now refuses to comply with the Court's orders. Please be advised that the Court today ordered that your client submit a declaration complying with Amended Case Management Order No. 19 by 5 p.m. Pacific time on March 14, 2019. A true and correct copy of that order, which requests "the declarations of . . . Redacted in compliance with Amended CM Order no. 19," is attached hereto as Exhibit A. Please comply.

We will submit to the Court your letters to us and our replies. We will take steps to redact your client's personal information from the public docket.

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relevant here, that declaration states only that "Exhibit 4 is a true and correct copy of a document produced by Godkin & Klein, LLP, in this matter bearing Bates numbers GKLLP000200-GKLLP000201." See Abrahamson Decl. Supp. Def.'s Ex Parte Appl. ¶ 6 (Feb. 25, 2019).

March 13, 2019

Page 3

Very truly yours,



Sonal N. Mehta

SNM:za

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# EXHIBIT A

**From:** ComplexCivil <complexcivil@sanmateocourt.org>  
**Sent:** Wednesday, March 13, 2019 11:35 AM  
**To:** ComplexCivil; Stuart Gross; Benjamin Klein; David Godkin; James Kruzer; Josh Lerner; Sonal Mehta; Laura Miller; Catherine Kim; SERVICE-SIX4THREE; Jack Russo; Chris Sargent; Thomas Mazzucco; Joseph Leveroni; Donald P. Sullivan  
**Subject:** RE: Six4Three v. Facebook (CIV533328) - Declarationis Deadline

Correction: Thursday, March 14, 2019.

---

**From:** ComplexCivil  
**Sent:** Wednesday, March 13, 2019 11:34 AM  
**To:** ComplexCivil <complexcivil@sanmateocourt.org>; 'Stuart Gross' <sgross@grosskleinlaw.com>; 'Benjamin Klein' <bklein@grosskleinlaw.com>; 'David Godkin' <godkin@birnbaumgodkin.com>; 'James Kruzer' <kruzer@birnbaumgodkin.com>; 'JLerner@durietangri.com' <JLerner@durietangri.com>; 'Sonal Mehta' <SMehtha@durietangri.com>; 'Laura Miller' <LMiller@durietangri.com>; 'CKim@durietangri.com' <CKim@durietangri.com>; 'SERVICE-SIX4THREE' <SERVICE-SIX4THREE@durietangri.com>; 'Jack Russo' <jrusso@computerlaw.com>; 'Chris Sargent' <csargent@computerlaw.com>; 'Thomas Mazzucco' <TMazzucco@MPBF.com>; 'Joseph Leveroni' <JLeveroni@MPBF.com>; 'Donald P. Sullivan' <Donald.Sullivan@wilsonelser.com>  
**Subject:** Six4Three v. Facebook (CIV533328) - Declarations Deadline

At the hearing today, the Court further ordered the declarations of Redacted, Redacted, and Redacted in compliance with Amended CM Order no. 19, issued on March 4, 2019.

These declarations shall be electronic served on all parties no later than Thursday, March 13, 2019 at 5 PM (PDT).



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**Honorable Judge V. Raymond Swope**  
Superior Court of the State of California  
County of San Mateo

14 March 2019

By email: [complexcivil@sanmateocourt.org](mailto:complexcivil@sanmateocourt.org)

Case No.: CIV533328

Our ref: RAN/32411

Dear Judge Swope

Redacted [REDACTED]

We are instructed by the above named.

Our client is aware of an email from the court of 13 March 2019, directing him to file a declaration by 5pm PDT on 14 March 2019. We write to respectfully request the judge to revisit that order. The order places an onerous burden on our client, which would take significant costs and resources for him to comply with.

Such an order would also be disproportionate and unfair, in light of the facts and his position within the case. In summary, our client is not a party these proceedings. He is an independent expert. Further, Facebook's counsel have admitted to misleading the court in procuring the order of 1 March 2019. Facebook's counsel also refused to provide our correspondence to the court or to provide this firm with the relevant contact details for the court, so we may contact the court directly.

We rather received the contact details for the court from Mr Murphy, counsel for Mr Godkin, at 20:38 GMT on 13 March 2019. Our client is accordingly writing to the court directly, at the first opportunity, so the court can understand his position and the

concerning actions of the Defendants and their legal team in procuring the order of 1 March 2019. We address the background and our client's position in turn.

### 1. Background

The background to our client's involvement in these proceedings is outlined below. Where we have set out matters in further detail in the evidence and correspondence chain enclosed with this letter, we have referred the court to those letters / evidence. References are in square brackets (e.g. [XXX]).

#### *i. Redacted background*

Our client is not a party to this litigation. Rather, he was instructed as an expert to Mr Godkin and the Plaintiffs to these proceedings. His retainer is enclosed [007-008]. His instructions were to consider whether there were any wider public interest elements to the documents.

Redacted has a track record in such tasks. Redacted  
Redacted that led to the company becoming a notorious and household name. Indeed, without Redacted noting the wider public interest in Redacted, it is unlikely that the international media would have been picked up on the story at all.

Our client's international standing and reputation is detailed in our letter to the Defendants of 5 March 2019 [001-004].

#### *ii. Redacted involvement in these proceedings*

The background to his involvement in these proceedings are set out in our letter of 5 March 2019 [001-004]. In summary, when Redacted was instructed to assist with his insight into the wider public interest, he did so without any legal advice. He of course did not see the need for legal advice, given that he was acting as an independent expert. As an aside, the court should note that the Defendants' counsel have repeatedly suggested

to [Redacted] that he should now take legal counsel from Mr Godkin, despite the suggestion that Mr Godkin has breached the terms of the order [051].

As detailed in our letter of 5 March 2019, [Redacted] did not receive any advice on the terms of the Protective Order. We will not rehearse those details herein. Suffice to say that [Redacted] is not a lawyer and acted under instructions at all times.

*iii. Awareness of CM Order 19*

Our client was first alerted to CM Order no. 19 of 1 March 2019 by Mr Godkin on that same date. On consideration of that order, [Redacted] sensibly instructed this firm to seek independent advice on the terms of that order. He did so at his own cost (resulting in his expert involvement in these proceedings having cost him money, having never been paid by the Plaintiffs).

2. Correspondence with the Defendants

Having considered the order and the *ex parte* application that led it, [Redacted] instructed this firm to write to the Defendants' legal team to ascertain the basis for the application and the subsequent order. We enclose a copy of that correspondence chain and relevant exhibits, which serves to show:

1. The *ex parte* application was based on a material misrepresentation. The Defendants' application stated that [Redacted] said in an email that he was "willing to confirm details of Facebook's confidential information to reporters "anonymously".<sup>1</sup> This was untrue. No such email exists. Despite some grammatical gymnastics by the Defendants in their letter of 13 March 2019 [057-059], they do not dispute that [Redacted] did not say these words.<sup>2</sup> Presenting

<sup>1</sup> The declaration of Mr Abrahamson of 25 February 2019, filed in support of the *ex parte* application of 25 February 2019, stated that "Gross & Klein produced a new e-mail sent by [Redacted], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously" ... In that e-mail, sent mere days after Six4Three explained the expert scheme to [Redacted], [Redacted] told the nonprofit [Redacted] that he was "ready to join [a conference call] at that time if need be." See id.3 In other words, Six4Three's "experts" were not only willing to talk with reporters from The Guardian, but also to collaborate with other media and non-profit entities."

<sup>2</sup> The Defendants' submissions in their letter of 13 March 2019 do not stand scrutiny. In particular, the last sentence of the paragraph quoted at footnote 1 above refers expressly, in the last sentence, to "that e-mail" from [Redacted]. "That" email does not support what is said in the *ex parte* application, as that application relied on an affirmative statement from [Redacted] that he would "confirm

these words as coming from [Redacted] was misleading and a material misrepresentation. That was the only evidence against our client in the *ex parte* application.

2. The Defendants refused to provide the complete chain of correspondence to the court or to provide [Redacted] with the contact details for the court [047-051].
3. We also understand that in oral submissions before the court on 13 March 2019, the Defendants did not refer to our correspondence, compounding the initial misrepresentation.

Our client is concerned that the Defendants have procured the order of 1 March 2019 by way of a material misrepresentation. Further, despite our client's best endeavours, the Defendants have not alerted the court to the misrepresentation, compounding the unfairness to our client. As explored below, the necessity of such an order, coupled with the cost to our client, is such for our client to respectfully request the court to reconsider the order.

### 3. Necessity of a declaration from [Redacted]

Despite our client seeking the assistance of the Defendants to contact the court, they have regrettably failed to engage with our client in a cooperative manner. Rather, they have approached this correspondence as hostile litigation between themselves and [Redacted] [Redacted], making their lack of independence for the need for an order abundantly clear.

To that end, we respectfully ask the court to review the need for our client to provide a declaration mindful of the following facts<sup>3</sup>:

1. The order was procured on the basis of wilful misrepresentation by the Defendants, portraying our client as having stated that he would be willing to breach the Protective Order where no such evidence in fact exists. Rather, there

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details of Facebook's confidential information to reporters "anonymously". This was simply not true and the evidence did not bear this out. No amount of wriggling by the Defendants can get them out of this simple fact – they had misled the court.

<sup>3</sup> These facts are dealt with in detail in our letters to the Defendants lawyers as enclosed with this letter.

is no evidence that our client was willing to breach the terms of the order or that he has breached the terms of the order.

2. There was no need for the Defendants to make an application on an *ex parte* basis. They could have reached out to our client before making the application. They did not do so, in order to leverage the court against him. This is demonstrated by the subsequent requests to our client went way beyond the terms of the 1 March 2018 order or the Protective Order. Regrettably, they went so far as to mislead the court to get that order.
3. The purpose of the order was to identify and prevent further leaks of the confidential and highly confidential information. The Defendants own case is that they do know who breached the order. In our letters of 5 and 7 March 2019 [001-004] and [039 – 046], he also confirmed to the Defendants that he was in no way involved in the issues in their *ex parte* application. Our client also deleted the information as requested by Mr Godkin, so there is no prospect of him leaking the information.
4. The order requires our client to explain his compliance with the order by not "revealing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information". This is not a simple task. In particular:
  - a. As above, our client has not received any assistance with understanding the terms of the order. He was reliant on those instructed him to appreciate the order and always acted on their instruction. The Plaintiffs and Mr Godkin are said to have breached the order. He does not wish to mislead the court in any way, in contrast to the regrettable conduct of those that have instructed him and the Defendants.
  - b. As such, in order to ensure that he is able to deal with this fully, he sought the Defendants to explain why they believe that he had breached the order. No explanation has been provided, other than reliance on the words and actions of third parties. At most, the Defendants' evidence suggests

that our client emailed a chain to say he was willing to join a call *if needed*. He did so purely in his expert instruction, to explain that there was a public interest in the documents. He did not need to discuss the documents directly to explain their public importance.<sup>4</sup> There is also no evidence that he in fact joined the call. His records confirm that he did not. He is therefore none the wiser as to why it is said that he has not complied.

- c. It is also not clear exactly which information the court considers "confidential or highly confidential" information. For instance, it is not clear if all the case summaries he received were covered by the Protective Order. He understood that one was not. He further understands that there is a live question about the status of these "case summary" documents before the court. He will have to get guidance on these matters, then consider his background involvement in the case.
- d. Redacted is also unclear about the extent to which he is said to have breached the other terms of the Protective Order. As far as he can understand, the Protective Order subsists between the Plaintiffs and the Defendants. Nevertheless, the Defendants have accused Redacted of breaching the wider terms of the Protective Order by for example not providing a list of former employers to the Defendants. It is not clear to us that the Protective Order entitles the Defendants to such information and when asked to explain, no explanation was forthcoming. Nevertheless, this example shows to serve the wider issues faced by Redacted by the order.
- e. Redacted would nevertheless be prepared to sift through the entire history of his involvement in the case (so far as such records exists) to certify what he has or has not done. He has deleted a large portion of information at the direction of Mr Godkin, which makes any such undertaking difficult.

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<sup>4</sup> The documents are of public interest, as shown by the actions (and reaction) of the British DCMS Committee of Parliament.

- f. On any consideration, this is a vast undertaking that he will have to do at his own cost. He will also have to pay for legal advice, both in this jurisdiction and in the US.
- 5. It is also not clear to our client what jurisdiction the Defendants have to seek these orders. As per the terms of CM Order 19, the order subsists against the Plaintiffs rather than to Redacted directly.
- 6. He is also conscious of legal privilege and requires advice to this end.

Despite these matters, Redacted is nevertheless seeking to assist the court as far as he can. He has provided documents and explanations to the Defendants, with a view to them providing this information to the court. He has however been hampered by the conduct and the uncooperative attitude of the Defendants.

Considering that (1) the Defendants *ex parte* application was based on material misrepresentation (2) that the purpose of the application is met by other means and (3) the cost and time it would take Redacted to comply, our client respectfully asks the court to reconsider the need for such a declaration from our client. It is plain that such a declaration is burdensome and would be unfair to our client.

Should the court nevertheless decide that Redacted is still required to provide such a declaration, our client will review his position at that stage. However, for reasons detailed above, such a declaration will take time and cannot be produced within 24 hours. We trust that the court will in any event understand the predicament faced by our client and release him from the need to provide such a declaration.

Should the court have any queries in respect of this matter, please contact Mr Ravi Naik of our offices.

Yours sincerely

**Irvine Thanvi Natas Solicitors**

# **EXHIBIT 7**

1 IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

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5 SIX4THREE, LLC, CERTIFIED TRANSCRIPT

6 PLAINTIFFS,

7 VS. CASE NO. CIV533328

8 FACEBOOK, INC., ET AL.,

9 DEFENDANTS.

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12 REPORTER'S TRANSCRIPT OF PROCEEDINGS (PAGE 7 - 11 SEALED)

13 BEFORE: HONORABLE V. RAYMOND SWOPE, JUDGE

14 DEPARTMENT 23

15 MARCH 13, 2019

16 A P P E A R A N C E S

17 FOR THE PLAINTIFFS:

18 STUART G. GROSS DAVID S. GODKIN  
ATTORNEY AT LAW ATTORNEY AT LAW

19 JAMES A. MURPHY JAMES A. LASSART  
ATTORNEY AT LAW ATTORNEY AT LAW

20 FOR THE DEFENDANTS:

21 JOSH H. LERNER LAURA E. MILLER CATHERINE Y. KIM  
ATTORNEY AT LAW ATTORNEY AT LAW ATTORNEY AT LAW

22 SONAL N. MEHTA NATALIE NAGLE ZACHARY ABRAHMSION  
ATTORNEY AT LAW ATTORNEY AT LAW ATTORNEY AT LAW

24 FOR THE PRINCIPAL PARTY:

25 JACK RUSSO  
ATTORNEY AT LAW

26 REPORTED BY: GERALDINE VANDEVELD, C.S.R. 8634

1 MR. LERNER IS ASKING FOR WHICH IS SIMPLY THAT YOUR HONOR  
2 ENFORCE THE ORDER FROM A WEEK AND A HALF AGO ON THE EX PARTE.  
3 WHAT WE STILL DON'T HAVE IS THREE THINGS WE STILL DON'T HAVE  
4 THAT YOUR HONOR ORDERED.

5 THE FIRST ONE IS THERE WAS AN ALLEGED EXPERT WHO NO  
6 ONE HAD HEARD ABOUT BEFORE. IT'S NOT EVEN CLEAR IF MR. GODKIN  
7 KNEW ABOUT HIM BEFORE. MR. FRISSORA. MR. FRISSORA WENT TO  
8 COLLEGE WITH MR. SCARAMELLINO. APPARENTLY MR. SCARAMELLINO  
9 ENGAGED HIM IN THIS MATTER. HE RUNS A HEDGE FUND. I HAVE NO  
10 IDEA WHAT HE POSSIBLY COULD HAVE BEEN DOING THAT COULD HAVE  
11 BEEN RELEVANT TO THE MATTER.

12 BUT APPARENTLY HE WAS RETAINED AND MR. SCARAMELLINO  
13 WAS WORKING WITH HIM AND HE MAY HAVE RECEIVED FACEBOOK  
14 CONFIDENTIAL INFORMATION. NOTWITHSTANDING THE COURT'S ORDER  
15 THAT THEY SUBMIT DECLARATIONS FROM ALL OF THESE PROPOSED  
16 EXPERTS, NO DECLARATION FROM MR. FRISSORA. WE DON'T KNOW WHAT  
17 HE HAD. WE DON'T KNOW IF HE STILL HAS IT. WE DON'T KNOW IF  
18 HE DESTROYED ANYTHING.

19 WE HAVE NO IDEA WHAT INFORMATION MAY BE OUT IN THE  
20 WILD WITH RESPECT TO HIM. THEY NEED TO SUBMIT A DECLARATION  
21 FOR MR. FRISSORA. AND, IN FACT, THEY HAVEN'T EVEN EXPLAINED  
22 IF THEY TRIED. WE DON'T EVEN KNOW IF THEY TRIED TO GET THAT  
23 DECLARATION.

24 THE SECOND THING WE NEED IS A DECLARATION FROM  
25 MR. DEHAYE. MR. DEHAYE EXPRESSLY SIGNED A PROTECTIVE ORDER  
26 ACKNOWLEDGMENT SUBJECTING HIMSELF TO THIS COURT'S

1 STATE OF CALIFORNIA )

2 ) SS.

3 COUNTY OF SAN MATEO )

4 I, GERALDINE VANDEVELD, OFFICIAL COURT REPORTER,

5 COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT THE FOREGOING CONTAINS A TRUE, FULL AND CORRECT  
7 TRANSCRIPT OF THE PROCEEDINGS GIVEN AND HAD IN THE  
8 WITHIN-ENTITLED MATTER THAT WERE REPORTED BY ME AT THE TIME  
9 AND PLACE MENTIONED AND THEREAFTER TRANSCRIBED BY ME OR AT MY  
10 DIRECTION INTO LONGHAND TYPEWRITING AND THAT THE SAME IS A  
11 CORRECT TRANSCRIPT OF THE PROCEEDINGS.

12 DATED: MARCH 14, 2019

13 

14  
15 GERALDINE VANDEVELD, C.S.R. #8634  
16 OFFICIAL COURT REPORTER  
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